The Bicameral Principle in the New York Legislature

BY

DAVID LEIGH COLVIN

SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY,
IN THE
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INTRODUCTION

The time seems ripe for an inductive study of the actual workings of the bicameral system. There appears to be a growing skepticism as to whether the two-chamber system in our State governments justifies the claims which have been made in its behalf. Recently the system has been conspicuously challenged in at least three States: In the Ohio Constitutional Convention of 1912, one of the leading members, a distinguished historical writer, introduced a proposal for a single chamber; early in 1913 the governor of the new State of Arizona, in a communication to the legislature, recommended a change in the State Constitution to provide for a single chamber; likewise the governor of Kansas has presented to the legislature of his State for its consideration a proposal for a constitutional amendment which would provide for a legislature of a single house, composed of one or two members from each congressional district. He says that he is satisfied, after eight years of service in the senate of his State, that the present system of law-making is antiquated and inefficient. He thinks that the present dual system is not justified, having been founded on the English Parliament, with its two houses based on the distinction between the nobility and the common people, each representing the diverse interests of these classes. His idea is to apply the plan of government by commission now in operation in many municipalities to the government of the State.

These proposals to change to the single chamber are evidences of the increasing misgivings concerning the

bicameral system. One cause of these misgivings is the feeling on the part of some that the second chamber has been used by the "interests" to obstruct desirable legislation. The Socialists have gone so far as to declare in their last two national platforms for the abolition of the United States Senate.

Among the writers on political science, the weight of authority is decidedly in favor of the bicameral principle. Several writers have denominated it an axiom of political science. It is asserted that it has been subjected to the thorough test of experience, and everywhere it has succeeded.

When the double-chamber and the single-chamber systems are compared with reference to the generality of their operation, it is found that there also the double chamber has the advantage. It exists not only in every State in the United States, but in the great majority of the important countries of the world.

On the other hand, a respectable minority of writers oppose the bicameral principle and a considerable number of States have the single chamber in successful operation. It exists in seven of the nine provinces of Canada, in sixteen German states, the Swiss cantons, Norway, Bulgaria, and a few of the smaller countries. According to one authority, there are fifty-three single-chambered legislative bodies. It also exists in a majority of the large cities of the United States, some having changed from the double to the single chamber because it was found that corruption lurked in the second chamber.

Abroad there seems to be a lessening regard for the bicameral principle. The depriving of the House of Lords of its veto power in 1911, and the agitation leading up to it, is familiar to all. In the convention for the

formation of the Constitution of the South African Union in 1909, the latest experiment in Constitution-building in the British Empire, there was a strong party in favor of doing away with the second chamber altogether.

Notwithstanding the difference of opinion and the tendency toward change, thus far there has been very little inductive study made of the bicameral system. Numerous writers on government and political science have made general reflections, and various theories with regard to it have been propounded. But these theories have not been examined in the light of the actual operation of the system.

The purpose of this study is to investigate the concrete workings of the bicameral principle as it is applied in one State. A preliminary analysis will be made of the theories which have been advanced with reference to the subject in general. Then, after a historical sketch of the system in New York, the aim will be to test these theories and determine how they work out in actual operation.

It is proposed to see whether the bicameral system is performing the function which it has been supposed to perform. In several respects our system of checks and balances has not worked in the manner designed by the Fathers. The electoral college has become a mere formality. The indirect method of electing United States Senators, not having fulfilled its purposes in the way expected, has been changed. Likewise, the check of dividing the legislature into two houses has resulted differently from what its early advocates expected. At this time, when there is a decided movement toward a more direct government, and when the work of the legislatures is being so generally criticized, the check of the bicameral

system needs to be re-examined from the viewpoint of actual legislative practice.

The legislative session of 1910 was selected as the chief basis for this study. That session was a fairly representative one, deviating from the average, if at all, in having a higher quality of membership, less corruption, and less bossism. Being recent, the facts could be ascertained more advantageously than in an earlier session. The more recent sessions of 1911 and 1912 can scarcely be taken as representative because of unusual situations. In 1911 the Democratic party came into power after having been in the minority for nearly twenty years, and in 1912 one house was Democratic and the other Republican. It would have been desirable to have made the study extend over a long period of years, but it was thought better to make an intensive study of one session than to try to cover a longer period less intensively. On some points references to other sessions have been made, but in such cases the appropriateness will be evident.

The writer has no preconceived notions, no theories to advance, no reform proposition to promote; the sole intention being to make an inductive study of the bicameral principle as it operates in the State of New York.

CHAPTER I

THEORIES CONCERNING THE BICAMERAL LEGISLATURE

Many writers have discussed the bicameral system. In 1786 John Adams wrote an extended essay in defense of the system in operation in most of the American States at that time. Hamilton, in the *Federalist,* explained the advantages of a two-chambered legislative body, using arguments which have been frequently repeated. Chancellor Kent and Justice Story, in their Commentaries, further developed the theory, the writings of the latter comprehending most of the arguments which have been made in its behalf. The utterances of recent textbook writers are based very largely on the earlier theories. It is the aim of this chapter to present briefly the views of the leading writers on the bicameral principle.

ARGUMENTS FOR THE BICAMERAL SYSTEM

Check against Unfaithful Representatives.—The first reason given by Hamilton for a second branch of the legislature is that it is a check against unfaithful representatives who may forget their obligations to their constituents. "It doubles the security to the people by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy where the ambition of corruption of one would otherwise be sufficient." [1]

[1] Federalist, Ford's Edition, p. 412.

Justice Story, in discussing this point, says [2] it is far less easy to deceive or corrupt or persuade two bodies into a course subversive to the general good than it is one. The two-chamber system operates as a preventive to attempts to carry private, personal, or party objects not connected with the public good. The circumstance that there exists another body, of equal power, jealous of its own rights, and independent of the influence of the leaders who favor a particular measure, by whom it must be recommended upon its own merits, will have a silent tendency to discourage the efforts to carry it by surprise or intrigue or by corrupt party combinations.

Mr. Bryce is more concrete. In discussing the checks which have been provided to limit or suppress legislative evils he mentions first the division of the legislature into houses and says,[3] "A job may have been smuggled through one house, but the money needed to push it through the other may be wanting. Some wild scheme, professing to benefit the farmers, or the cattlemen, or the railroad employees, may, during its passage through the assembly, arouse enough attention from sensible people to stop it in the senate." In such a case, the passage of a bill through one house acts as a notice of its impending enactment and the delay in passing through the second house may arouse enough opposition to defeat it.

Check on Hasty, Ill-considered, and Careless Legislation.—A second reason for the bicameral system is that it operates as a security against hasty, ill-considered, and careless legislation. Justice Story refers to the fact that, "Measures are often introduced in a hurry, debated with

[2] For Justice Story's views see Commentaries On the Constitution, 4th Edition, Vol. I., Paragraphs 548-570.

[3] The American Commonwealth, Ed. of 1910, Vol. I., p. 557.

little care, and examined with less caution. The very restlessness of many minds produces an utter impossibility of debating with much deliberation when a measure has a plausible aspect." He says that it is the tendency of public bodies to be "impatient, irritable, and impetuous." These being the characteristics of legislative bodies, it is claimed for the bicameral system that it allows errors and mistakes to be corrected before they have produced any public mischiefs, by interposing delay between the introduction and final adoption of a measure, and thus furnishing time for reflection and deliberation, and also by providing for another consideration by a different body actuated by different motives and organized upon different principles.

Provides a Jealous and Critical Revision.—One of the theories frequently advanced is that the existence of a second chamber makes probable the jealous and critical revision by a rival body of men. Chancellor Kent said, "A hasty decision is not so likely to proceed to the solemnities of law when it is to be arrested in its course and made to undergo the deliberation and probably the jealous and critical revision of another and a rival body of men sitting in a different place and under better advantages to avoid the prepossessions and correct the errors of the other branch." [4]

Justice Story, after referring to the fact that legislation involves interests of vast difficulty and complexity and requires nice adjustments, said,[5] "It is of the greatest consequence to secure an independent review of it by different minds acting under different and sometimes opposite opinions and feelings." A second chamber is a sort of appellate jurisdiction which acts and is acted upon in the

[4] Kent's Commentaries on American Law, Vol. I., Par. 222.

[5] Commentaries, Par. 557.

exercise of an independent revisory authority. He thought that it could scarcely fail to give the legislation a full and satisfactory review.

Most of the writers hold the theory that the two chambers should be antithetical in character. Chancellor Kent refers to the revision as jealous and critical and by a rival body of men.

Justice Story, discussing the check on undesirable bills, has in mind a second chamber jealous of its own rights and independent of the leaders who influenced the first chamber. In discussing the tendency of legislatures to exceed their proper boundaries he says that the only effectual barrier against oppression is to balance interest against interest, ambition against ambition, and the combinations and spirit of dominion of one body against the like combinations and spirit of another.[6] He also says that it is obvious that the more various the elements which enter into the actual composition of each body the greater the security will be.

Hamilton, in referring to the protection which the people are afforded because two distinct bodies are required to concur in evil schemes, postulates that the bodies shall be distinct. He says, "As the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures and with the genuine principles of republican government."[7] It is evident that, to the degree that there are influences which tend to lessen the dissimilarity, the argument for the bicameral system loses part of its force.

[6] *Ibid,* Par. 558.

[7] Federalist, p. 412.

Several writers who have favored the two-chamber system, provided there is an adequate dissimilarity between the two houses, have questioned the advantage if the two chambers are practically identical in constitution.

Sidgwick says, "The main end for which a senate is constituted is that all legislative measures may receive a second consideration by a body different in quality from the primary representative assembly, and if possible superior or supplementary in intellectual qualifications. If two chambers are elected on methods so similar that they are sure to agree after election, the ends arrived at in the two-chamber system would hardly be attained in ordinary times." [8] And Lieber says, "If the two houses were elected for the same period and by the same electors, they would amount in practice to little more than two committees of the same house; but we want two *bona fide* different houses, representing the impulse as well as the continuity, the progress and the conservatism, the onward zeal and the retentive element, innovation and adhesion, which must ever form integral elements of all civilization." [9]

A Check against Passions.—Another object of the separation of the legislature into two houses, according to Chancellor Kent, is "To destroy the evil effects of sudden and strong excitement and of precipitate measures springing from passion, caprice, prejudice, personal influence, and party intrigue, which have been found by sad experience to exercise a potent and dangerous sway in single assemblies." [10]

Hamilton thought that single and numerous assem-

[8] Sidgwick, Elements of Politics, p. 445 and 448.

[9] Lieber, Civil Liberty and Self Government, p. 198.

[10] Kent's Commentaries, Vol. I., Par. 222.

blies have a propensity to yield to the impulse of sudden and violent passions and are likely to be seduced by factious leaders into intemperate and pernicious resolutions. Hamilton was distrustful of popular passions both among the representatives and among the people. Another reason he gave was that the senate would be a defense to the people against their own temporary errors and delusions. "There are particular moments in public affairs when the people, stimulated by some irregular passion or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterward be the most ready to lament and condemn. In these critical moments there is needed the interference of some temperate and respectable body of citizens in order to check their misguided career until reason, justice, and truth can regain their authority over the public mind." [11] For protection against the passions both among the people and in the legislature he wanted a second chamber which would be long tenured and stable, above and aloof from the influence of the crowd, which could require a sober second thought before a measure became law.

Restrains the Accumulation of Power.—Another argument is that the bicameral system restrains the propensity on the part of legislative bodies to accumulate power into their own hands.

Justice Story says, "The legislative power has a constant tendency to overleap its proper boundaries from passion, from ambition, from inadvertence, from the prevalence of faction, or from the overwhelming influence of private interests. Under such circumstances the only ef-

[11] Federalist, p. 419.

fectual barrier against oppression, accidental or intentional, is to separate its operations." [12]

Lecky, in his "Democracy and Liberty," says,[13] "A single omnipotent Democratic chamber is at least as susceptible as an individual despot to the temptations that grow out of the possession of an uncontrolled power, and it is likely to act with much less sense of responsibility and much less real deliberation." It should be observed that Lecky, as well as some other writers who are the most opposed to a single chamber, has in mind a supreme unchecked chamber. Where it is subject to the checks of a written Constitution, an independent judiciary, and the executive veto, it is clear that the situation is not quite the same as where there are no such checks.

A recent textbook writer [14] says that "the double chamber maintains the independence of the executive, a single house feeling that it represented popular will would tend to subject the executive to its control, thus destroying that separation between legislation and administration that good government demands."

A Means of Representation.—A further advantage of the Bicameral system, as claimed by Professor Garner, is that, It affords a convenient means of giving representation to special interests or classes in the State and particularly to the aristocratic portion of society, in order to counterbalance the undue preponderance of the popular element in one of the chambers, thus introducing into the legislature a conservative force to curb the radicalism of the popular chamber. 'We cannot,' says Bluntchli, 'ignore the distinction between the aristocratic and demo-

[12] Commentaries, Par. 558.
[13] Page 299.
[14] Gettell Introduction to Political Science, p. 239.

cratic elements in the population of the State and allow one of these elements alone representation in the legislature without doing the other an injustice.' " [15]

A final advantage is that the bicameral system affords an opportunity for the representation of political units where the Federal form of government exists.

ARGUMENTS AGAINST THE SINGLE CHAMBER

Several writers present arguments not only in behalf of the double chamber, but also arguments in opposition to the single chamber. Some of the reasons for the double chamber have their import because of the defects of the single chamber. Single chambers are considered to be subject to passions, caprice, and intrigue. They are said to be rash, subject to the impulse of the moment, inconsiderate, and oppressive. It is interesting to observe that these views, which were generally current a century ago, derived large support from a historical study of single chambers.

The essay of John Adams is probably responsible for much of the almost unanimous opinion among the early American writers against a single chamber. In 1786 he published "A Defence of the Constitutions of Government of the United States." [16] M. Turgot, who was one of the strongest advocates of the unicameral principle when it was adopted in France in the Constitutions of 1791 and 1793, had made some curt criticisms of the bicameral system of the States of the American Confederation. He was inclined to ridicule our affectation in copying the House of Lords without having any Lords to use for the

[15] Introduction to Political Science, p. 434.
[16] Works, Vols. IV.-VI.

purpose. Adams, who was well acquainted with Turgot, made a defense of the system instituted in the majority of American States, which provided for a governor, a council, or senate, and a house of representatives. He wrote a work of three volumes in which he reviewed the history of many governments of the ancient, mediæval, and modern world, and also summarized the writings of many political philosophers, and undertook to show that governments by single assemblies had generally been visionary if not corrupt and violent, and had usually ended in despotism. Adams's purpose was to uphold a "balanced" government and to oppose a government by a single assembly. His arguments have little application to an American State legislature of to-day, with the greatly expanded executive power and elongated Constitutions construed by a powerful judiciary. But the material which he assembled has had a wide influence in creating an opposition to the single chamber.

Hamilton said it added no small weight to his arguments "to recollect that history informs us of no long-lived republic which had not a senate." [17]

Justice Story cites the tempestuous history of the mediæval Italian republics as an argument against the single chamber. Three recent writers [18] refer to the French Constitution of 1791, to the short-lived Constitution of the Second Republic of 1848, and two of them refer to the abortive German Parliament of 1848 as representative of the single-chamber system. A recent English writer [19] refers to England's brief experience with the single

[17] Federalist, p. 420.

[18] Garner, p. 428; Gettell, p. 238; Leacock, Elements of Political Science, p. 161.

[19] Marriott, Second Chambers, p. 27.

chamber when the Long Parliament, March 19, 1649, passed an act declaring the House of Lords abolished two days after it had likewise abolished the office of king.

The Continental Congress has been cited as an illustration of the evils of a single legislative body. Mr. P. L. Ford says, "Frequently it had adopted resolutions only to repeal them the next day, and in several cases had rejected, reconsidered, and adopted, and again rejected in the course of a week, the same motion; the change being due to the arrival or departure of members, and to the lack of any check." [20]

The plight of the Continental Congress can be explained by the difficulties of the situation it had to meet,—the carrying on of the unequal war, the small powers which the Confederation had, its impotence to enforce the laws the Congress did pass, the difficulty of members being in constant attendance owing to distance, mode of travel, and their interests at home. With the situation discouraging as it was, it is not surprising that propositions were rejected, reconsidered, adopted and rejected again. That is not an infrequent occurrence in the New York Legislature at the present time. Worse variableness being by no means uncommon in a bicameral legislature in times of peace and quiet, it is certainly no argument against a unicameral legislature in times of revolution and stress.

It will be observed that most of these examples of the failure of a single chamber are taken from periods when revolution was rife, when the causes of revolution were far removed from the structure of the legislative body, and when it is doubtful if history would have been written differently if there had been two chambers instead

[20] Federalist, p. 142.

of one. Many of the evils which naturally arise at a revolutionary period seem to have become associated with the unicameral system, and, through repetition by successive writers, there seems to have developed a prejudice against the single chamber out of proportion to what the facts would seem to warrant.

ARGUMENTS AGAINST THE BICAMERAL SYSTEM

Although it has been asserted [21] that the bicameral principle is an axiom of political science, a number of eminent men have favored the unicameral system. Among the prominent early American advocates were William Penn and Benjamin Franklin. Writing in 1789, Franklin called attention to the fact that a second chamber may obstruct the good proposed by the other. Other writers mention merely the bad it may obstruct. He says, "If one part of the legislature may control the operations of the other, may not the impulses of passion, the combinations of interest, the intrigues of faction, the haste of folly, or the spirit of encroachment in one of these bodies obstruct the good proposed by the other and frustrate its advantage to the public?" [22] He cites the experience with the mischiefs of a second branch, the delays and great expense in carrying on public business, and a mischief even to the preventing of the defense of the provinces during several years when distressed by Indian wars. He cites also the unfortunate experience with the second chamber in connection with the iniquitous demand that the proprietary property should be exempt from taxation.

One of the leading attacks on the bicameral system

[21] American Commonwealth, Vol. I., p. 484.
[22] Works, Vol. V., p. 165.

was that by Amos in his "Science of Politics."[23] He says there are two topics to be kept distinct, though they intermingle at some points, (1) the general value of a second chamber, and (2) its best constitution. These topics are so far related that it may be advantageous to have a second chamber only if it be well constituted. After mentioning the usual arguments in favor of two chambers of some sort, he makes the following answers, which are so compact as to be quoted almost in full:

"1. The enormously increased legislative business of modern times (the discharge of which may be facilitated by the division of labor which the co-ordinate chambers renders possible) is on the whole delayed, hampered, and interrupted to an extent wholly disproportionate to any benefits derived by a second discussion conducted in a different assembly.

"2. As a barrier against the tempestuous current of democracy, the second chamber is worse than useless because if the more popular chamber is practically omnipotent, resistance will only be persisted in in matters on which the mind of the people is not fully made up, and, therefore, on which no legislation ought to take place at all; which is only saying that the popular chamber is badly composed, not efficiently representing the people, and being prone to reckless legislation; or, if on the other hand the popular chamber is not omnipotent and the two chambers are of coequal efficiency, legislation will either be the result of a series of compromises or be barred altogether by a series of deadlocks as in Victoria.

"3. So far as, like the senates of the United States and France and the legislative councils of the Australian Colonies, it represents a different class of interests or

[23] Page 238, ff.

views represented at one discussion of a measure, and another class at another discussion, it is pure legislative loss,—without any compensating gain,—to have one class of interests or views represented at one discussion of a measure and another class at another discussion, instead of having both represented simultaneously to the great gain of the debate and the saving of time, expense, and labor.

"With respect to the classes of arguments addressed in favor of two chambers, those which relate to the beneficial impediments a second chamber is calculated to oppose to the progress of democratic caprice and which recommend it for preventing errors and accidental blemishes in legislation—they can be disposed of at once. Such arguments mark a transitional state of mind in which really popular institutions are not yet accepted without distrust, and in which what is called democracy is regarded as a fatal political miasma which must envelop all States some day, but may by cautious preventative measures be staved off for a time.

"The true and sufficient remedy for bad or rash legislation is the improvement of the constitution of the assembly which really represents the people and the amendment of the legislative machinery. Such amendments would be concerned with the length of notice which must be given of a proposed law, with the number of times it has to be discussed, with the information to be procured by committees and special commissioners on its bearings, with the rules of debate and with the opportunities to persons outside the house to make their views on the proposal known.

"A common discussion in one broadly representative chamber must surpass in value any series of discussions

conducted first by persons having exclusively one order of interests and afterward by those having exclusively another order. When the two alternative courses are contrasted in this way, it seems almost absurd that there should be any doubt as to the side on which the advantage lies.

"And what is here said of the superior value of having all classes of interest represented simultaneously instead of successively applies with no less force to the value of having various modes of thought prepossessions and habitual standards of opinion all brought to bear in all discussions of a measure instead of having some exclusively recognized and enforced at one period of the discussion and the opposite on a quite different occasion when the measure has reached a different stage.

"Nothing but the actual and, so to speak, accidental, historical evolution of the British Houses of Parliament could have made that appear so natural and familiar which is, in fact, wholly alien to all principles of discussion or recognized in other fields of inquiry, and which can never be part of a permanent political system."

Professor Elson, who advocated a single chamber in the Ohio Constitutional Convention in 1912, in discussing his proposal in the *Review of Reviews,* said: "Why did England and her colonies have the bicameral system? Because, first, society was of different classes, and each chamber represented a class; and, second, because it was at first believed that one branch would prove a check and balance on the other. Seldom has this proved true in practice. Far more frequently has one chamber hid behind the other, shifted the responsibility for a bad act to the other. Hundreds of times has an unwieldy two-chambered legislature passed acts that could never have

passed had it been composed of a few trained, mature men, conscious that they were acting in the limelight of the public eye." [24]

A recent English book by W. H. W. Temperley, "Senates and Upper Chambers," gives a comprehensive survey of legislative structure throughout the world. He gives a list of fifty-three states which have single chambers.[25] His description of the attitude of the British colonies is significant. He says, "The colonies do not, like the American States, criticize single-chamber government in deference to theories, it is in deference to facts that their endorsement of the bicameral system is a somewhat grudging and ungracious one." [26]

In speaking of the newly organized South African Union of 1909, he tells us that not only were the upper chambers of all the States abolished, but the Constitution gives the Federal Senate no protection after ten years and there was a strong party in the convention in favor of doing without it altogether. "Whatever may have been thought of a single-chamber government in a Unitary State, it had always been previously considered that an Upper Chamber was indispensable in a Federal State. But in any case the general testimony of other colonies to the worth of the bicameral system must be regarded as a somewhat ungracious one. Nowhere is the Upper Chamber really imposing in the unitary colonies, in few is it actually powerful, in many it is regarded as a rather tedious relic of a by-gone ge. In Canada and South Africa, certainly, it is looked upon as an ancestral relative whose death would not cause any particular grief to

[24] Vol. XLV., p. 340. March 1912.
[25] Page 9.
[26] Page 38.

the colonies in question, though they do not care to terminate its existence by speedier means."

This concludes the survey of the leading views which have been advanced concerning the bicameral principle. Much of what has been written suggests the atmosphere of the study rather than that of the legislative hall. The nearest approach to an inductive study which has been made is merely a comparison of the structure of legislative bodies over the world and not much investigation has been made of their actual operation. Before going further it may be well to summarize the theories which have been advanced in behalf of the bicameral principle.

SUMMARY OF BICAMERAL THEORIES

First. The second chamber serves as a check on hasty, ill-considered, and careless legislation. It interposes delay between the introduction and final adoption of a measure and thus furnishes time for reflection and deliberation. It provides for further consideration by another body.

Second. It makes possible a jealous and critical revision by a rival body of men. Stated less strongly, it permits an independent review of legislation by different minds acting under different and sometimes opposite opinions and feelings.

Third. It is more difficult to corrupt, deceive, or persuade two bodies than one. The danger of a betrayal of public trust is greater when the legislative power is in one house. It requires the concurrence of two bodies in schemes of usurpation or perfidy.

Fourth. It destroys the evil effects of sudden and strong excitement and of precipitate measures springing from passion, caprice, prejudice, personal influence, and

party intrigue. It gives opportunity for a sober second thought.

Fifth. It restrains the propensity on the part of legislative bodies to accumulate power into their own hands.

Sixth. It affords a convenient means of giving representation to special interests and classes in the State and particularly to the aristocratic portion of society, in order to counterbalance the undue preponderance of the popular elements in one of its chambers. It affords an opportunity for the representation of political units where the Federal form of government exists.

These, in brief, are the chief points which have been made in favor of the bicameral principle. It is proposed to see how they apply in our current legislative process.

CHAPTER II

HISTORICAL SKETCH OF THE BICAMERAL SYSTEM IN NEW YORK

COLONIAL PERIOD

The New York Legislature of to-day is the lineal descendant of the Colonial legislature. The senate was substituted for the Colonial council in the first Constitution of 1777. The Colonial council antedates English sovereignty in New York. Its existence began in 1626, under the administration of Director General Peter Minuit, who had a council of five, and, beginning with the first English governor, there was a council of five members.

In the government of colonies at that period it was customary with both the Dutch and English governments that the governmental authority should be in the hands of a governor and a council appointed by the home government. In the patent granted to the Duke of York the proprietorship of New York in 1664, the Duke was authorized to appoint and discharge governors and other officers for the administration of provincial affairs. He was vested with full governmental powers, and there was no provision for popular representation.[1]

After considerable agitation and several petitions for a representative assembly, in 1683 the Duke directed the governor to call an assembly of the people. The first leg-

[1] C. Z. Lincoln Constitutional History of New York, p. 422.

islature met in October, 1683, and the governor's council was a constituent part of the legislature, sustaining the relation to the assembly which the senate sustains to the modern legislature.[2] The governor had an absolute veto, as did also the Duke. The first legislature was dissolved in 1685, owing to the death of the king, and a second assembly was elected. It met in October, 1685. It is interesting to note that in this early day there was a conflict between the two houses. In the second assembly, six acts were passed which were assented to by the governor; three passed the assembly but did not receive the assent of the governor; and one passed the council and was signed by the governor but failed in the assembly.[3]

The Duke of York, having become king, abolished the assembly in 1686 and conferred on the governor and council of seven members the power to make laws and administer the affairs of the colony, with the provision that the laws were to be sent to England within three months for the king's approbation.[4]

After the accession of William and Mary, in 1689, a new governor was appointed, and the governor, by and with the advice and consent of the council and assembly, was authorized to enact laws, statutes, and ordinances. The governor was given a veto of all laws, and they were also subject to final confirmation by the crown.[6] In 1691 an assembly of seventeen members was elected, and from then on the Colonial legislature continued until the time of the revolution. The early Colonial legislative system

[2] O'Callaghan, Origin of Legislative Assemblies in New York, p. 14-15. Lincoln, p. 430.

[3] O'Callaghan, p. 21-22.

[4] O'Callaghan, p. 24. Lincoln, p. 435.

[6] O'Callaghan, p. 36. Lincoln, p. 437.

was divided into three parts: the governor, the council, and the assembly. The council was composed of from nine to thirteen members, varying at different periods. Its members usually received their appointment from the crown. It was thus constituted so as to represent the interests of the home government. Some of the governors had a qualified right to fill vacancies, but appointments could be disapproved by the crown. Members of the council were required to be freeholders, inhabitants of the province, "men of estate and ability, and not necessitous people, or much in debt." [7]

The functions of the council were officially stated in 1735 to be twofold—"to sit as one part of the legislature and to sit as a council to advise and assist in all political cases." [8] At first the governor sat with the council, and bills were passed upon by the governor at a session of the council. He was deemed a member of the council and was its presiding officer. He voted at his pleasure on any proposition, and in case of a tie he could cast a deciding vote, thus having in some cases two votes as a member of the council, as well as a governor's veto. In 1733 the question was raised whether the governor could legally act as a member of the council, and in 1735 the home government decided that he should not sit and vote as a member of the legislative council.[9] After that it was the custom for the governor to meet the council and assembly in joint session and there consider the bills and sign such as met his approval.

In 1736 the common council of New York City tendered the use of the common council chamber for the

[7] Lincoln, 442 ff.

[8] O'Callaghan, p. 38.

[9] Lincoln, p. 443.

legislative council. The resolution recited that the assembly was already holding its meetings in the same building, and that if the council also held its meetings there "both houses of the legislature may have speedy recourse to each other." [10] A significant feature of this resolution is the use of the phrase, "both houses of the legislature," treating the governor's council as a distinct and independent branch of the legislature.

The council conducted its legislative business according to the usual parliamentary forms. It read bills three times, referred them to a general committee, practically a committee of the whole, amended bills, and occasionally, but not often, proposed original bills. There were several controversies between the assembly and the council over the latter's power to originate or to amend money bills, but its right to do either was upheld in every case of appeal to the home government.[11] It is clearly to be seen that it was very important that the council's power to originate or to amend money bills should be upheld, as the council was the chief means of carrying out the wishes of the home government in this respect. Of course, the governor or the crown could veto any measures, but the council was a most essential adjunct in order that the measures could be amended and so shaped that the veto need not be exercised too often and that the forms of representative government could be maintained without too much friction.

Lincoln says, "The Colonial legislature was a miniature parliament. The governor, coming from England with the king's commission represented the sovereign; the

[10] *Ibid,* p. 446.

[11] *Ibid,* p. 446-7.

council was the House of Lords, and the assembly the House of Commons." [12] The influence of the home model is shown by the fact that the formalities and procedure on the organization of a new assembly were very similar to those incident to the organization of a new House of Commons.

While the council represented the interests of the home government and the "men of estate," the assembly, although granted originally after repeated petitions for representative government, was by no means representative of all the people. By an act passed in 1699, voters for members of the assembly were required to be freeholders, and there was also a religious disqualification, although this latter was not enforced. The number of members of the assembly increased from seventeen in 1691 to thirty-one in 1770.

THE FIRST CONSTITUTION, 1777

The framers of the Constitution were not endeavoring to evolve any theoretically perfect plan of governmental organization. It was not a group of wise men who, after research and deliberation were trying to utilize the accumulated experience of the centuries in framing their new form of government. Rather, it was a group composed mostly of young men surrounded by the activities of war, in frequent fear of capture, compelled to change their meeting place half a dozen times, who were setting up a government to meet the needs of the immediate situation. They were not endeavoring to invent any new scheme of government, and it is not surprising that they followed quite closely the model which they had been ac-

[12] Lincoln, p. 447.

customed to. This tendency to preserve existing forms is shown in preserving the legislative system practically as it was established in the colony in 1691. In the original draft it was intended to continue the council as a part of the legislature, but the name was later changed to the senate.[13] New York may have been somewhat influenced by the other colonies, ten of which preceded New York in the adoption of a Constitution, and in three of these one branch of the legislature was called a senate. It is thought that Jefferson first suggested the name for the upper house in a draft of a form of government which he proposed for Virginia. His plan, however, proposed a senate to be appointed by the house of representatives for a term of nine years.[14]

In the first draft of the Constitution of 1777, in the article entitled, "Senate, How Constituted," it was stated, "And the Convention do further ordain and declare that the burthen of supporting and defending this state does at all times rest principally on the free-holders thereof and therefore that they of right ought to have an ascendancy in the legislature. Wherefore, this Convention do ordain that the Senate of the State of New York shall consist of twenty-four wise and discreet free-holders," etc.[15] But in the final draft the formal reason was omitted, but the substance was retained. It was provided that the senate should consist of twenty-four free-holders to be chosen out of the body of free-holders, and that they should be chosen by the free-holders of this State, possessed of free-holds of the value of 100 pounds over

[13] *Ibid,* p. 501.

[14] *Ibid.,* p. 503.

[15] *Ibid,* p. 516.

and above all debts charged thereon.[16] Thus no property limit was fixed for senators other than that they should be freeholders without regard to the value of the free-hold, but they could be voted for only by persons holding a free-hold with 100 pounds over and above all debts. There was thus a higher qualification for voters than for candidates. The property qualification for the electors of the senate was the subject of much debate in the second constitutional convention.

The assembly was composed of seventy members, but there was a provision for an increase in each branch at stated periods until the maximum should be reached which was fixed at one hundred senators and three hundred members of assembly.[17] In 1801 the senate had increased to forty-three members, and the assembly to one hundred twenty-six.[18] By amendments made in 1801, the number of senators was fixed at thirty-two and the assembly was given one hundred members, with provision for a possible increase to one hundred fifty by additions to be made after each census.[19]

There was a property qualification for voters for members of the assembly, but not so large as for voters for senators. Voters for assemblymen were required to own a free-hold of twenty pounds or to have rented a tenement of the value of forty shillings and to have been rated and actually paid taxes in the State. In 1821 there were about 105,000 eligible to vote for senators and about 120,000 more, or 225,000, eligible to vote for assemblymen.

[16] Thorpe, American Charters, Constitutions and Organic Laws. Vol. V., p. 2631.

[17] *Ibid,* Vol. V., pp. 2629-2632.

[18] Lincoln, p. 608.

[19] Thorpe, Vol. V., pp. 2638-9.

Senators held office for four years, being elected from four great districts, and assemblymen held office for one year, the members being apportioned to the counties in proportion to the number of electors.

One of the provisions of the Constitution of 1777 was that, "Whenever the assembly and senate disagree, a conference shall be held in the presence of both and be managed by committees, to be by them respectively chosen by ballot." [21]

This was one of several provisions which was omitted by the constitutional convention of 1821. In that convention Chancellor Kent and Senator Rufus King explained that, "the conferences, as at present directed, were only calculated to produce collisions, to array the two houses more and more against each other, and to confirm them respectively in their preconceived opinions," and Mr. Sharpe said, "experience had shown the conferences to be useless and a mere legislative farce." [22] In the debate it was brought out that conferences between the two houses had not been very frequent, and that the business had generally been "settled by informal committees."

COUNCIL OF APPOINTMENT

Another conspicuous provision which required the working together of the two branches was the Council of Appointment. Instead of having appointments made by the governor and confirmed by the senate there was a council of appointment. Once each year the assembly appointed four senators, one from each of the four great districts, which senators formed a council of appointment,

[21] Thorpe, Vol. V., p. 2632.

[22] Debates of the Constitutional Convention of 1821, p. 435.

of which the governor was president and had a casting vote, but no other, and, with the advice and consent of the council, the governor was to appoint the officers who were not specified by the Constitution to be chosen in some other manner. No senator was eligible to the council for two successive years.[23] The plan of the council of Appointment, as devised by John Jay, contemplated a joint responsibility for appointments to be shared by the governor and both houses of the legislatuare. It required the assembly to choose the council from the senators, thus aiming directly or indirectly to bring both branches of the legislature into co-operation with the governor.

But the indirect method resulted in diffusion of responsibility and made the council a prey to party interests. The council became the center of a long and bitter political struggle which lasted until the time of its abolition. The governor was elected for a term of three years, and the assemblymen who elected the council were chosen annually, so the council was frequently of the opposite party from the governor. There was a controversy as to the construction of the Constitution with regard to the power of members of the council, as well as the governor, to make nominations. A special constitutional convention in 1801 construed the article of the Constitution pertaining to this to mean that the right to nominate all officers, other than those who by the Constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of the State and in each of the members of the Council of Appointment.[24] This construction was due largely to party ambition, both parties having declared in favor of it.

[23] Thorpe, Vol. V., p. 2633 ff.

[24] *Ibid,* Vol. V., p. 2639.

The council thus became a means by which the party could assume immediate control of appointments after it secured control of the assembly, elections for which were held each year. The governor was elected for three years and senators for four, but the party discovered this method of immediate control of patronage, based on annual elections to the lower house. If the party carried the lower house and had one dependable man in each of three senatorial districts it could control the patronage. The control of the offices depended almost wholly on the control of one house. Instead of providing for the joint responsibility of the two houses in the matter of appointment, the council made possible the subordination of the one house to the other and both to the party.

It is to be noticed that the sphere of action of the two houses in the matter of appointments was much different from that in legislation. The assembly became *functus officio* upon its choice of the four senators. Its choice was limited to one from each of four different districts. The senate had no control other than that four of its members were chosen. It had no direct choice in determining which four of its members should compose the council.

It was said that, "The members of the assembly were more often selected with views to control the choice of the council than with regard to their fitness as legislators. When chosen, it was in that body where corruption was most active; where the wise workers of party most successfully managed to procure a selection for a council of such individuals from the senate, as would best subserve the private objects of the principal workers of the machinery." [25] The council became a powerful and some-

[25] Gen. Tallmadge, Debates, p. 590.

times a very objectionable political machine, making appointments and removals at will.[26]

COUNCIL OF REVISION

Another distinguishing feature of the first Constitution was the Council of Revision, which was frequently called a third branch of the legislature. Article III provided, "And whereas, laws inconsistent with the spirit of this Constitution, or with the public good, may be hastily and inadvisedly passed; Be it ordained, that the governor for the time being, the chancellor, and the judges of the Supreme Court or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature;

"And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revisal and consideration, and if, upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bills should become a law of this State, that they return the same, together with their objections thereto in writing," to the house originating it with the provision that it could become a law if the legislature repassed it by a two-thirds vote of both houses.[27]

In the constitutional convention of 1821, General Tallmadge, in reviewing the history of the Council of Revision, said: "In the organization of the legislature it was thought advisable that there should be two branches, the senate and the assembly, that the one might control and

[26] See Gitterman, "The Council of Appointment in New York," Political Science Quarterly, Vol. VII, p. 80.

[27] Thorpe, Vol. V., p. 2628.

check the abuses of the other and prevent either from acquiring an overwhelming and dangerous power, if such a disposition should be manifested. As an additional safeguard to the rights and liberties of the people, a third branch of the legislature, the Council of Revision, was instituted. Its object was to resist the encroachments of the senate and assembly, whether through error or corruption, upon the other branches of the government, as well as upon the rights of the citizens, to prevent all, all, from being swallowed up by the inordinate power of the legislature. This third supervising power was not only defensive in its nature, but it was a power to guard the people against hasty and improvident legislation." [28]

The council thus had power not only to pass on the constitutionality but the expediency of bills, to determine whether they were "inconsistent with the public good" or whether they were "hastily and unadvisedly passed." The framers evidently did not trust to a second chamber to be a complete check on hasty and ill-advised legislation.

During its forty-five years' history the council vetoed one hundred sixty-nine bills, fifty-one of which were passed over the veto.[29] About half of them were vetoed as unconstitutional. The number of bills vetoed was less than three per cent. of the bills passed. The council was abolished in 1821 and the veto placed in the hands of the governor. In the constitutional convention of 1821, there were several effective arguments made against it. It was recognized to be an intermingling of judicial and legislative functions, as the judges were required to consider all bills passed by the legislature, and it was deemed

[28] Debates, p. 65.

[29] Lincoln, p. 744.

best to separate the judiciary from the legislative department and confine the judges to judicial duties. The separation would free them from attacks and imputations which lessen the influence of the judiciary system.

There was a widespread opinion that the influence of party views at times had been dominant in the Council of Revision. Mr. Van Buren said, "I object to the council as being composed of the judiciary, who are not directly responsible to the people. I object to it because it inevitably connects the judiciary with the intrigues of party strife; because it tends to make our judges politicians and because such has been its practical effect." [30] It was even asserted by the president of the convention, Daniel D. Tompkins, then Vice-President of the United States, who had been for thirteen years a member of the council, that "for thirty years political questions in the two houses have been equally and universally so in the council and that every individual judge has for that time been reputedly and notoriously an ardent partizan in politics." [31]

The judicial members were not responsible to the people for their appointment or continuance in office. Some members of the judiciary had served in the council for over twenty years, and it was felt that they represented political views which had been superceded. There was objection to members of a defeated and discredited party blocking the aims of the party in power. One occasion, above others, which was cited was in the period of the War of 1812. At first the two houses were divided. An election intervened and the people returned a legislature ready to apply the public resources for the public defense. The legislature passed a variety of acts to help

[30] Debates, p. 71.

[31] *Ibid*, p. 88.

carry on the war, but they were objected to by the Council of Revision. This obstruction of the public will was declared to be the prime cause which had led to its overthrow.[32]

In the debates, several instances were cited where the divisions in the council were along party lines. When the "hasty and undesirable" legislation proved to be that which the party machine desired enacted, when the Council of Revision rejected bills which had been recommended by the governor as well as passed by the legislature, when representatives of a bygone party could obstruct the expression of the current will, it is not surprising that particularly the practical politician element in the convention was much opposed to the operation of the check.

CONSTITUTIONAL CONVENTION OF 1821

Reference has been made to the omission of the provision for conference between the two houses and the abolition of the councils of appointment and revision by the Constitutional Convention of 1821. That convention was composed of many of the most eminent men of the time, and the record of its debates is a most valuable repository of the political ideas then prevalent. In that convention there was little discussion of the bicameral principle as a direct proposition, as it was not proposed to create a single house. There was an incidental discussion of it by Mr. Van Buren when discussing the governor's veto as a check on legislation. He said: "Its object is, first, to guard against hasty and improvident legislation; but more specifically to protect the executive and judicial departments from legislative encroachments.

[32] Mr. Van Buren, Debates, p. 72.

With regard to the first of these objects—the prevention of hasty and improvident legislation—the system of every free government proceeds on the assumption that checks, for that purpose, are wise, salutary, and proper. Hence the division of all legislative bodies into distinct branches, each with an absolute negative upon the other. The talents, wisdom, and patriotism of the representatives could be thrown into one branch, and the public money saved by this procedure; still experience demonstrates that such a plan tends alike to the destruction of public liberty and private rights. They adopted it in Pennsylvania, and it is said to have received the approbation of the illustrious Franklin; but they found that one branch only led to pernicious effects. The system endured but for a season; and the necessity of different branches of the government, to act as mutual checks upon each other, was perceived, and the conviction was followed by an alteration in their Constitution. The first step, then, toward checking the wild career of legislation, is the organization of two branches of the legislature. Composed of different materials, they mutually watch over the proceedings of each other. And having the benefit of separate discussions, their measures receive a more thorough examination, which uniformly leads to more favorable results. But between these branches, as they are kindred bodies, it might sometimes happen that the same feelings and passions would prevail—feelings and passions which might lead to dangerous results. This rendered it necessary to establish a third branch, to revise the proceedings of the two."[33] He proceeded to argue that the Council of Revision had been the improper place in which to lodge this revisory power, because its members were not directly

[33] Debates, p. 70.

responsible to the people, and advocated a veto in the hands of the governor.

Although Van Buren referred to Pennsylvania as a State which had abandoned the single chamber because it had produced pernicious effects, another member, in arguing that some check in addition to the second chamber was necessary, cited two conspicuous examples of corrrupt and scandalous measures which the legislatures of other States had passed by overwhelming majorities of both houses.[34] It is significant that the two such notorious measures referred to had been passed by the legislatures of Pennsylvania and Georgia, both of these States which had previously had a single-chambered legislature but had changed to the bicameral system before the measures referred to had been passed. It was evident that the second chamber had not furnished a sufficient check.

Another speaker made the point that the second chamber was not a check on hasty legislation and it was stated that the legislative business at the commencement of the session was usually well done but it was not so at the close.[35]

The valuable contributions to the subject in this convention were the debates upon the "materials" of which the two houses were to be composed. As we have seen, there had been a much higher qualification for the voters for senators than for the voters for assemblymen. There was not much difference of opinion upon reducing the property qualification for voters for the assembly, but there was considerable debate upon whether the property qualification for the electors for the senate should be retained. In Colonial times the council largely represented

[34] Mr. Bacon, p. 119.

[35] Mr. Sharpe, p. 112.

the interests of the crown, and under the first Constitution it was the landholders who elected the senate. There was a contest in the convention of 1821 as to whether they should continue to do so. Some of the most distinguished members of the convention, including Chancellor Kent and Chief Justice Spencer, spoke in favor of a higher qualification for voters for senators. It is in this debate where we find interesting views as to the functions of the upper house, of the interests it should represent, and how it should be constituted.

The debate indicates that up to that time the upper house was not looked upon as a self-imposed check of the people upon themselves, but rather that it was an agency of the forces which were dominant in the government to protect their interests and negative any measure which was against the ruling element.

Chief Justice Spencer said, "Those who suppose that a second branch of the legislature, the senate, was intended merely as a check upon the first, appear to me to have misunderstood its origin and design. It was intended to be differently composed and differently organized for other purposes than a mere second branch of legislation. The objects of government are the protection of life, liberty, and property. These are important and paramount rights; and every wise framer of government will extend its protecting care over all and each of them. The assembly, consisting of greater numbers, elected by all the sound and wholesome part of the adult male population of the State, is more emphatically charged with the protection and preservation of the personal rights, the lives and liberties of the citizens. The senate was intended as the guardians of our property generally, and especially of the landed interest, the yeomanry of the State." [36]

[36] Debates, pp. 216-217.

He looked forward to the time when the State would have a large population, the condition of the community would change when manufactures and commerce would be widely and extensively established. "At present the agricultural interest predominates; but who can foresee that, in process of time, it will not become the minor body? And what is there to protect the landed interests of the State, the cultivators of the soil, if the wide and broad proposition on your table be adopted, admitting the whole mass of the adult population to vote not only for governor and assembly, but senators also? He would venture to predict that the landed interests of the State will be at the mercy of the other combined interests; and thus all the public burdens may be thrown on the landed property of the State." He appealed to the convention to preserve one branch of the legislature to the landed interests.[37]

The Chief Justice not only advocated a senate elected by a free-hold property qualification in order to protect the interests of the land-holder, but he argued for a dissimilarity in the genius of the two branches. He quoted Hamilton, and also Jefferson, when he said: "The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles." Continuing, Justice Spencer said: "Can there be a plainer, or more self-evident proposition, as applied to the private transactions of men, than if an individual, having great and interesting concerns, found it necessary to appoint two agents to manage the concerns as guards and checks against the dishonesty or the defective judgment of the one, would he appoint two precisely similar in their feelings, judgments, motives, and

[37] *Ibid,* p. 218.

habits? Or, if wise, would he not select men possessing different qualities and thus he might combine everything essential to the promotion and preservation of his own interests? If the agents were exactly alike, moved by the same impulses, having an identity of qualifications, in effect he would have but one agent, and his precaution of checks would be nugatory.

"However subdivided the legislature may be in its several branches, if it be composed of persons exactly similar in qualifications, and be elected by persons having the same qualification, it will be virtually one and the same body. Put one body in an upper house, the other in a lower house; call one lords, and the other commons, it avails nothing; they are but one body, possessing the same feelings, the same sympathies, and the same objects."

He discussed the argument that the smaliness of the number and the longer duration of the office of senator would give the requisite dissimilarity between the two branches and thus obviate the necessity of a distinction in the qualification of the electors. This he conceived to be a mistake. "The duration of the office may make the senators somewhat more independent, but it can neither alter nor change the identity of their composition; and the smallness of the number can have no other effect than to promote a more familiar discussion." [38]

Another speaker pointed out that, without the freehold qualification, senators are not made accountable to the land-holders of the State, and therefore the land-owners are not given their legitimate weight in the government.[39]

General Root, in answer to the argument of the Chief

[38] *Ibid,* pp. 217-218.

[39] Mr. Van Vechten, p. 230.

Justice that the two branches should be so organized as to possess different genius, after referring to the quotations from Hamilton and Jefferson and saying that they should not be carried away by speculations merely because they were endorsed by eminent men, made the following pointed remarks: "But why must the two branches of the legislataure be composed of different genius and heterogeneous materials? To constitute a sufficient check, says the gentleman. "And so, for this purpose, it must consist of discordant elements! Is this the way that government should be constituted? That the different branches, instead of harmonious movement, should be set in hostile array against each other? The honorable gentleman has adverted to the case of an individual employing two agents for the transaction of his business. Sir, I want no better example to illustrate my views of the subject, and to deduce a consequence directly the reverse of that which he has drawn. Were I that individual, I would choose men who might act in unison, and counsel each other upon the matter of their agency. If they possess different tempers—opposite opinions and hostile feelings,—could I expect that the agency would be well managed? Would not my interests be lost sight of in their distractions and animosities? What government ever sent two ministers to negotiate a treaty and selected them for their known hostility to each other?" [40]

Chancellor Kent made one of the strongest addresses in support of a free-hold qualification for voters for senators. He made an eloquent survey of the wonderful history of the State, and, looking into the future, prophesied the serious dangers which would result from the omission of that provision of the Constitution. He said, in part:

[40] *Ibid,* p. 223.

"The senate has hitherto been elected by the farmers of the State, . . . I shall feel grateful if we may be permitted to retain the stability and security of the senate, bottomed upon the free-hold property of the State. Such a body, so constituted, may prove a sheet anchor amidst the future factions and storms of the republic. The great leading and governing interest of this State is, at present, the agricultural; and what madness it would be to commit that interest to the winds. The great body of the people are now the owners and actual cultivators of the soil. With that wholesome population we always expect to find moderation, frugality, order, honesty, and a due sense of independence, liberty, and justice. It is impossible that any people can lose their liberties by internal fraud or violence, so long as the country is parceled out among free-holders of moderate possessions, and these free-holders have a sure and efficient control of the affairs of the government. Their habits, sympathies, and employments necessarily inspire them with a correct spirit of justice and freedom; they are the safest guardians of property and the laws. . . . Now, Sir, I wish to preserve our senate as the representative of the landed interest. I wish those who have an interest in the soil to retain the exclusive possession of a branch of the legislature as a strong-hold in which they may find safety through all the vicissitudes which the State may be destined, in the course of Providence, to experience. I wish them to be always enabled to say that their free-holds can not be taxed without their consent. The man of no property, together with the crowds of dependents connected with great manufactures and commercial establishments, and the motley and undefinable population of crowded ports, may, perhaps, at some future day, under skillful management, predomi-

nate in the assembly, and yet we should be perfectly safe if no laws could pass without the free consent of the owners of the soil. That security we at present enjoy; and it is that security which I wish to retain.

"The apprehended danger from the experiment of universal suffrage, applied to the whole legislative department, is no dream of the imagination. It is too mighty an excitement for the constitution of mortal man to endure. The tendency of universal suffrage is to jeopardize the rights of property and the principles of liberty. There is a constant tendency in human society, and the history of every age proves it; there is a tendency in the poor to covet and share the plunder of the rich; in the debtor to relax or avoid the obligation of contracts; in the majority to tyrannize over the minority, and trample down their rights; in the indolent and profligate to cast the whole burden of society upon the industrious and the virtuous; and there is a tendency in ambitious and wicked men to inflame these combustible materials. It requires a vigilant government and a firm administration to counteract that tendency. . . . Society is an association for the protection of property as well as of life, and the individual who contributes only one cent to the common stock ought not to have the same power and influence in directing the property concerns of the partnership as he who contributes his thousands. He will not have the same inducements to care and diligence and fidelity. His inducements and his temptation would be to divide the whole capital upon the principles of an agrarian law.

"Liberty, rightly understood, is an estimable blessing, but liberty without wisdom and without justice is no better than wild and savage licentiousness. The danger which we have hereafter to apprehend is not the want, but the

abuse, of liberty. We have to apprehend the oppression of minorities, and a disposition to encroach upon private right—to disturb chartered privileges—and to weaken, degrade, and overawe the administration of justice; we have to apprehend the establishment of unequal and consequently unjust systems of taxation, and all the mischief of a crude and mutable legislation. A stable senate, exempted from the influence of universal suffrage, will powerfully check the dangerous propensities, and such a check becomes the more necessary, since this convention has already determined to withdraw the watchful eye of the judicial departments from the passage of laws." [41]

Judge Van Ness was in favor of maintaining the constitutional provision. One argument he made was that it would enable the landed interests to check the moneyed interest. He said every nation extensively engaged in agriculture, commerce, and manufactures has in it two great and rival interests—the landed and the moneyed interests. The latter is generally the most powerful. He cited the experience of England. He thought it wise and politic to give to the landed interest an influence to check the moneyed interest.[42]

Thus we see by the learned and leading members of the judiciary of the State an open, outspoken, and direct advocacy of the control of the upper house by one distinct interest. It was aimed to establish in the Constitution of the State a permanent negative on the efforts of the landless masses. It was clearly recognized that if such a negative were maintained, the protected class would be safe and secure, as no laws could pass without its consent. This recognition, which was openly expressed, is

[41] Debates, pp. 220-222.

[42] *Ibid,* p. 267.

suggestive in relation to the present situation, where, although not accomplished by restricted suffrage, the interest that can control the upper house can be perfectly safe and secure.

Others in addition to the members of the judiciary expressed similar views. Mr. Van Vechten argued that "the landed interest of the State, on account of its stability and importance, is entitled to distinct weight in the choice of at least one branch of the legislature." He claimed that the man who has only life and liberty did not need protection to the same extent as one who, in addition, possesses property.[43]

On the side of those who opposed the free-hold qualification, Mr. Van Buren appealed to experience and asked what had been the practical effects of the senate constituted as it had existed for more than forty years, whether they had been such as to afford any additional security to property; whether the members of the senate had been more respectable for talents or integrity, and whether they had shown a greater regard for property or been more vigilant in guarding the treasury than the assembly. He claimed that the sense of immediate responsibility to the people produced more effect on the assembly than the consideration that they represented the landed classes did on the senators.[44]

Mr. Buel likewise appealed to experience and asked, "Is it pretended that the assembly, during the forty-three years' experience which we have enjoyed under our Constitution, has been in any respect inferior to the senate? Has the senate, although elected by free-holders, been composed of men of more talents, or greater probity than

[43] *Ibid,* p. 226.

[44] *Ibid,* pp. 260-261.

the assembly? Have the rights of property generally, or of the landed interest in particular, been more vigilantly watched, and more carefully protected, by the senate than by the assembly? . . . The gentlemen admit that hitherto the assembly has been as safe a depository of the rights of the landed interest as the senate." [45] He proceeded to give an explanation of the reason why the provision for the control of the senate by the land-holders came to be in the Constitution. He said: "When our Constitution was framed, the domain of the State was in the hands of a few. The proprietors of the great manors were almost the only men of great influence; and the landed property was deemed worthy of almost exclusive consideration. Before the Revolution, free-holders only were allowed to exercise the right of suffrage. The notions of our ancestors were all derived from England." [46] He referred to feudal tenures, the law of primogeniture, and the superiority of the landed interest in England and that there it was a long time before any other interests than that of the land-holders were attended to. He said that for many years the legislative and judicial power in England was annexed to the land. It was not surprising that the framers of our Constitution adopted some of the notions which they had inherited from their ancestors.

Another explanation was given by Mr. Ross. He said that nearly all the free-hold property was possessed by a few families, and that provision was adopted to conciliate them and enlist them in the cause of the Revolution. Unless they were indulged in this favorite discrimi-

[45] *Ibid,* p. 240.

[46] *Ibid,* p. 241.

[47] *Ibid,* p. 245.

nation it would lead to disaffection which the most imperious consideration urged them to prevent. He thought it had been justified because any innovation calculated to alarm or disaffect those on whom they were obliged to depend for resources would have been dangerous.[47]

In the debates, another salient point was made by Chief Justice Spencer, who, in referring to the statement that the senate had not been superior in wisdom or gravity, attributed the deficiency to the large districts, the candidates being unknown, and to party spirit. "The question put by the elector as to the qualifications of candidates has not been whether they were wise, or good, or virtuous, but what are their politics, and under whose banner are they enrolled?" [48]

The significant feature about the whole discussion was the distinct acknowledgment and open avowal by the eminent supporters of a senate chosen by restricted suffrage that their efforts were in behalf of a distinct interest and that in the past the upper house had been representative of a distinct interest.

The proposal to retain the special property qualification for voters for senators was defeated by a large majority. The result was a foregone conclusion because the senate had been an obstruction to the dominant party. The Democratic party, led by Van Buren and Tompkins, controlled the convention by a large majority, the choice of delegates in most of the counties having been made a party question.[49] In the previous election they carried the assembly by seventy to fifty, but of the senators elected that year by a restricted suffrage, five of the eight belonged

[48] *Ibid,* p. 216.

[49] Hammond, History of Political Parties in New York, Vol. II., p. 2.

to the opposite party, most of whose members in the convention favored a restricted senatorial suffrage. There were more voters who could vote only for the assembly than there were who could vote for both. The Democratic party had been gaining its strength from the class who were non-voters for the senate, and it was opposed to its objects being further blocked by a hostile senate and governor. The assembly and senate were placed on the same electoral basis. It was a victory for the party interest. In the first senate elected under the new Constitution, the Democrats elected all thirty-two of the members.[50]

The convention still endeavored to create a diversity between the two branches by electing the assembly by counties and the senate by districts, the State being divided into eight districts instead of four. The terms continued as before, one year for assemblymen and four years for senators. A property qualification was required for senators, a free-hold of $1,000 over and above all debts and incumbrances. The number of assemblymen was fixed at one hundred twenty-eight and senators at thirty-two, one-fourth of them to be elected each year.

The second Constitution provided specifically that a bill might originate in either house, and that it should be subject to amendment by the other. The senate was given the power of confirmation of appointments.

LATER CHANGES

Since the convention of 1821 there has been little important change in the structure of the legislature and little material in the debates of much value to our subject.

[50] *Ibid,* p. 103.

In 1846 the term of senators was shortened to two years and they were elected by single districts.[51] In 1845 all property qualifications for office were removed,[52] and in 1894 the size of the legislature was increased to fifty, later to fifty-one, senators, and one hundred fifty assemblymen.[53]

[51] Thorpe, Constitutions, Vol. V., p. 2656.

[52] *Ibid*, p. 2653.

[53] *Ibid*, p. 2698.

CHAPTER III

INTERCAMERAL RELATIONS

In this chapter a study is made of the relations between the two chambers; first the formal constitutional provisions, and then the reciprocal action of the two houses in the introduction, amendment, and final disposal of bills, also their joint action and provision for conference committees. Consideration will be given to the amendments by the second house and the concurrence in amendments. One of the questions discussed is the extent of the rivalry between the two houses and whether there is such a thing as jealous and critical revision by a rival body. Finally, there is a discussion of the relative quality of membership, whether the senate attracts better men.[1]

CONSTITUTIONAL PROVISIONS

In the present constitutional structure, the differences between the two houses are few. The senatorial term is two years, just one year longer than that of the as-

[1] The sources for the succeeding chapters include the Legislative Index; the Journals of the two houses; the bills; the legislative and clerk's manuals; the messages and papers of the governor; newspaper files; reports and publications of the Citizens' Union, New York Civic League, and similar organizations. Much information was gathered by means of frequent visits to the legislature in session to observe the actual practice, and from conversation with members, officers, newspaper men and others regularly attending the legislative sessions.

sembly. The senatorial districts are roughly three times as large as those of the assembly, although the population of each varies widely. The population of the senatorial districts, under the apportionment of 1907, ranged from 106,103 to 179,746. The assembly districts are either coterminous with the county, as are forty districts, or are a subdivision of a county. The forty county districts are of widely different population, and the others are by no means equal.

The compensation of the members of each house is the same. The powers of each house, with the exception of the confirmation power and impeachment power, are the same. Neither house can adjourn for more than two days without the consent of the other. The limitations upon legislative action, which are increasing, are upon the legislature as a whole rather than either house.

In the Constitution it is provided that certain officers and members of boards or commissions shall be appointed by the governor by and with the advice and consent of the senate. The legislature has also provided that certain officers shall be appointed in this manner. In this confirming power the senate has a function not possessed by the assembly. But inasmuch as it is only occasionally exercised to the extent of refusing to acquiesce in the nomination made by the governor, this superiority of the senate cannot be considered a very important one. During the years 1909 and 1910 there were two hundred fifty-three such appointments by the governor, only one of which was not confirmed by the senate.

There is no attempt to provide for that inequality of the houses and dissimilarity of interests which is emphasized by some writers and employed in many countries. The principal distinctions are that the senators have a

year longer term, and each member casts one fifty-first of the vote of the house, while each assemblyman can cast only one one-hundred-fiftieth of the vote of his house.

These distinctions can be considered as only a small part of the means which the theoretical writers say should be employed in the constitution of the legislature in order to enable each house to operate as a real check upon undue and rash legislation, or to afford a means of giving representation to special classes or interests.

The constitutional structure and powers of the two houses, outside of the confirming and impeachment powers, being practically the same, the more important matter for study is how the two houses actually work together.

ORIGINATION OF BILLS

The Constitution provides that any bill may originate in either house.[2]

In the legislature of 1910, of the 1,990 different bills introduced, 945, or forty-eight per cent., were introduced into both houses, 810 originated in the assembly, and 235 in the senate. Of the 945 bills introduced into both houses, 608, or nearly sixty-five per cent., succeeded in passing the legislature. Of the 810 originating in the assembly, 275, or thirty-four per cent., passed, and of the 235 bills originating in the senate, 84, or thirty-five and seven-tenths per cent., passed both houses. Those bills originating in the senate stood a slightly better chance of passing the legislature than those originating in the assembly, while the per cent. of those introduced in both which passed was a surprisingly large per cent. Nearly two-thirds of the bills which were introduced in both

[2] Article III., Section 13.

houses passed the legislature, although 147 of the 608, or twenty-two per cent., were checked by the executive. But of the 359 bills introduced in a single house successful in passing the legislature, the executive checked 113, or thirty-one per cent., suggesting that those which were not sponsored by members of both houses were less desirable bills—at least they were less successful in becoming laws.

While the bills introduced into both houses amounted to forty-eight per cent. of the total introduced, they comprised sixty-three per cent. of those passing the legislature and sixty-five per cent. of those which became law. Many bills are introduced by members to please some constituent or to endeavor to make a record for activity, although they are never expected to get farther than the committee. In 1909 one assemblyman introduced 95 bills, of which only one passed, and none became law. Most of such bills appear in only one house, more appearing in the assembly because of the larger membership. Of the 810 introduced in the assembly, 416 never got beyond committee.

Of the 1,990 bills introduced, 1,128 passed the assembly. Of those, 161 failed of passage in the senate. Of these 161, 93 were bills which had been introduced into the assembly only, and 68 had been introduced into both houses. Fifty-seven per cent of the bills passing the assembly which the senate defeated had not been introduced into the senate.

Of the 1,990 bills introduced, 1,036 passed the senate. Of those, 69 failed of passage in the assembly. Of these 69, twenty were bills which had been introduced in the senate only, and forty-nine had been introduced into both houses. Only twenty-nine per cent. of the bills pass-

ing the senate which the assembly defeated were those which had not been introduced into the assembly. The assembly seems to have been more favorable to the senate's bills than the senate was to those of the assembly, the senate being a greater check.

As about one-half of the bills are introduced in both houses, it frequently happens that duplicate bills pass, each through its own house, unamended. Notwithstanding that the two copies are identically worded, one of them must pass the other house before it goes to the governor. In 1910 there were about fifty cases where the same measure passed each house, and then passed one house a second time. There were seven cases of duplicates where the same bill passed both houses twice and the two identical bills were sent to the governor. Two were discovered and recalled and five were left for the governor's veto. There were a few cases of duplicate bills where each bill passed its own house, but failed to pass the other.

AMENDMENTS BY THE SECOND HOUSE

Another Constitutional provision is that "all bills passed by one house may be amended by the other." [3] In the matter of amendments by the second house of bills which have passed the other house, two facts are conspicuous. One is the small number of senate bills which the assembly amends, and the other, and more remarkable, fact is the acquiescence by the first house in the amendments of the second.

Of the bills which had passed the assembly, 128 were amended by the senate. But of the bills which had passed

[3] Article III., Section 13.

the senate only eighteen were amended by the assembly. Of the bills which passed the legislature, thirteen per cent. were amended in the senate after passing the assembly. Less than two per cent. were amended in the assembly after they had passed the senate.

The discrepancy between the amending activity of the senate and of the assembly is notable. But it was probably greater in 1910 than ordinarily because, in that year, more than twice as many bills were advanced from the assembly to the senate as from the senate to the assembly. Many bills were not considered by the senate until after passed by the assembly, as it got behind in its work owing to the Allds case. That was an investigation by the senate of the record of one of its members against whom charges of corruption had been made. It monopolized the attention of the senate for several weeks, while the assembly was able to go ahead with its work. About 672 of the bills passed were advanced from the assembly to the senate and only 295 from the senate to the assembly. In proportion to the number of bills which came from the other house, if the assembly had amended as many as the senate it would have amended forty-four instead of eighteen. In exercising the function of amending the measures of the opposite house, the senate is clearly a much more effective organ than the assembly.

Of the assembly bills amended by the senate, none were defeated by the assembly. Only two were reamended by the assembly, three were sent to conference committee, and four, after being concurred in and repassed, were afterward recalled and amended.

Of the eighteen bills amended by the assembly after being passed by the senate, all but one were concurred in by the senate and became law, and that one was laid aside on the last day of the session.

Thus there is an acquiescence in amendments which is significant. There were only two cases of reamendment by one house after a bill had been amended by the other except in the case of recalled bills, and on these there had already been a concurrence, the bills having passed the legislature and been sent to the governor.

A writer in the *Quarterly Review* for July, 1910, said, "The cardinal virtue of a bicameral system is that, since neither side can ride rough-shod over the opinions of the other, each is driven to find a middle way for the solution of its difficulties."[4] Judging by the experience of the New York Legislature for 1910, the bicameral system does not seem to find the middle way. If the action of one house was amended by the other, the amendment was almost always accepted by the first, there being only two cases of reamendment by the first house before passage, and only three bills were sent to conference committees. The two cases of reamendment were assembly bills which were amended by the senate and reamended by the assembly, but the senate concurred in the reamendment and both became law. All of the assembly bills which were amended by the senate and returned to the assembly except these two were concurred in.

Of the 128 bills which had passed the assembly but were amended by the senate, eighty-nine became law directly upon concurrence by the assembly and approval by the executive; three were recalled, amended, repassed, and became law; one was recalled, amended, and vetoed; nineteen others were vetoed; four were killed by mayors; one was vetoed by a mayor but was repassed over his veto; four were recalled but were returned to the governor without amendment and became law; three went to conference

[4] Page 247.

committee; two were reamended; and two, although amended in the senate, had failed to pass that body. It is noticeable that of the 128 amended bills only four were recalled and further amended.

Even if it is assumed that the four bills were recalled for amendment in the interest of the originating house, that would make only nine bills in the whole session which were amended by the other house in which the amendment was not fully concurred in. This indicates little effort after a bill had passed one house and been amended by the other to find a middle way between the two houses. Neither does it indicate a conflict or antagonism between the two houses. There was no middle way, because neither house insistently stood out for one side. Legislation is not ordinarily characterized by opposition between the two houses. They are not the contending elements in the legislature. Still less is there a tendency to a deeper generalization of principle because of the bicameral system. Of the nine bills, if the facts were known, it would probably be shown that the four recalls were inspired by the governor, and of those which went to conference committee two were big appropriation bills; so, at best, there was small range for the exercise of a "deeper gen eralization of principle."

THE THREE-DAY PROVISION

The Constitution also makes the following provision concerning the passing of bills. "No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage, unless the governor or the acting governor shall have

certified to the necessity of its immediate passage, under his hand and the seal of the state." [5]

The three-day provision is intended to provide against hasty legislation, yet bills amended by the second house and returned to the first are frequently acted upon immediately. The Clerk's Manual [6] states, "If a message from one house to the other announces the passage of a bill with amendments, such amendments, by the practice of the senate, may be acted on at once, concurred in with or without amendment, or non-concurred in, or referred to a standing or a select committee." The following extract from the Senate Journal for May 26, 1910,[7] illustrates the rapidity with which amendments of one house may be passed through the other.

"The assembly returned the bill (No. 1590, Assembly reprint No. 2658, Int. No. 778) entitled "An act to amend the Forest, Fish, and Game Law, generally," with a message that they have concurred in the passage of the same with the following amendments." Here follow twenty-two amendments. "Mr. H. moved that the senate concur in said amendments. The president put the question whether the senate would concur in said amendments, and it was decided in the affirmative.

"The president then put the question whether the senate would agree to the final passage of said bill as amended, the same having been printed and upon the desks of the members in its final form for three calendar legislative days, and it was decided in the affirmative, a majority of all the senators elected voting in favor thereof and three-fifths being present."

[5] Article III., Section 15.

[6] Page 633.

[7] Page 1921.

This bill, which is not an exceptional one, originally passed the Senate on May 19th. On May 21st it was amended by the assembly and recommitted. On May 25th it passed the assembly with twenty-two amendments, and on May 26th, one day later, it passed the senate.

It is not required that three days elapse between the passage of a bill by the two houses. The courts have held that the Constitutional provision is complied with if the bill lies upon the desks of the members in final printed form for three calendar legislative days, and they have also held that the term members means members of the legislature as an entirety, not members of the senate and assembly merely as such.[8]

Thus it is not necessary that a bill be printed by each house, and it is the practice to file the assembly bills on the desks of the senators, and vice versa. In this manner, through the mere filing by the clerks, the Constitutional provision is complied with and amendments and bills can be rushed through.

Amendments by the second house are thus not safeguarded against hasty action in the original house. If the second house wishes to put a joker in a measure and the original house is careless, the haste of concurring in amendments renders the so-called check of the bicameral system valueless. With reference to what the legislation would have been if enacted as passed by the first house, the bicameral system, instead of checking, tends to further hasty legislation.

COMMITTEES OF CONFERENCE

In many discussions of the bicameral principle, con-

[8] People ex rel. Hatch v. Reardon, 184, N. Y. 431, 110 App., Div. 821.

siderable attention is given to providing means whereby deadlocks between the two houses can be obviated. As has been noted,[9] the Constitution of 1777 contained a provision for a conference to be managed by committees chosen by ballot. That was omitted in the later Constitutions.

The present joint rules of the senate and assembly provide that, in every case of difference between the two houses, either house may request a conference and appoint a committee for that purpose, and the other house shall appoint a committee to confer. The conference committee shall consider and report on only those matters which are directly at issue between the two houses. It is authorized to report such modifications or amendments as it thinks advisable. The report is acted upon first in the house assenting to the conference. After it has acted, the papers and a message certifying its action are transmitted to the other house. If the conferees fail to agree, a report of such disagreement may be made and a further conference may be had either by the same or new committees appointed for such purpose. If each house refuses conference and adheres to its decision, the bill is lost and can not be again revived during the same session.[10]

Conference committees in the New York Legislature are resorted to very infrequently. Most of the differences between the two houses are settled by the leaders in informal conferences outside of the legislature. In 1910 there were only three bills for which conference committees were appointed. Two of those were the large appropriation bills which contained appropriations for many

[9] Chapter II. supra.

[10] Clerk's Manual (1912) p. 95.

purposes. One was the general appropriation bill appropriating over $25,000,000 for the support of government; another was the deficiency bill, carrying over $7,000,000; and the third bill related to legal assessments in Syracuse. In this latter case, conference committees were appointed in both houses, but the bill which passed was the assembly bill, the senate receding from its amendments and passing the same bill as originally received from the assembly.

An extract from the Senate Journal illustrates the procedure in that body in appointing a conference committee to deal with the deficiency appropriation bill.[11]

"The assembly returned the assembly bill (No. 2553, Senate reprint No. 1660; Rec. No. 733) entitled, 'An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations,' with a message that they have non-concurred in the amendments of the senate thereon. Mr. Hill (chairman of the finance committee) moved that the request be agreed to. The president put the question whether the senate would agree to said motion, and it was decided in the affirmative The president appointed as members of that committee on the part of the senate Messrs. Hill, Brackett, and Frawley.

"Ordered that the clerk return said bill to the assembly with a message that the senate has agreed to the request for a committee of conference thereon, etc."

On the last day of the session, Mr. Hill from the committee on conference presented the following:

"To the legislature. The undersigned appointed by the senate and assembly as a committee of conference relative to the matters of difference arising between the two houses upon Assembly Bill Number (etc.), entitled (etc.).

[11] Senate Journal 1910, Vol. II., p. 1808.

report that they have duly conferred on said matters and agreed to recommend as follows: Report in favor of the following substitute bill." It was signed by the members of the committee from both houses. "Mr. Hill moved that the said report be agreed to . The president put the question whether the senate would agree to the final passage of said bill, the necessity for the immediate passage of the same having been certified by the governor, and it was decided in the affirmative."

The president of the senate and the speaker of the assembly having the appointment of the conferees, those are appointed who represent the interests which the presiding officers desire to further, and the officers in turn are the servants of the party.

In the United States Congress it has been frequently pointed out that in conference committees the Senate is the more potent house because the rules of the United States Senate provide for unlimited debate, which renders possible a defeat of the conference report unless favorable to the Senate. On the other hand, in the New York Legislature it is claimed that the assembly is the more potent chamber because, under the rules, near the close of the session the power of the assembly is concentrated in the rules committee, and it is practically impossible to get any measure through the assembly unless that committee is favorable. Conference committees on appropriations are not usually appointed until near the close of the session. With the potential power to defeat other measures which senators are interested in, the assembly, through its rules committee, can wield a club to compel favorable assent to its wishes. An argument in justification of the rules committee which one Speaker has made is that it is a device for the assembly to protect itself against the

senate. It is to be doubted if this argument is very valid in so far as it implies a rivalry between the two houses. Both houses represent usually the same party, and the same interests, and, in the matter of appropriations, concessions are made without regard to the house originating them, the aim of the legislators apparently being to help each other all around so far as it is dared to do so.

RIVALRY BETWEEN THE HOUSES

The whole question of the opposition between the two houses is an important one. Many writers have assumed that one house is jealous of the other—that one subjects the measures of the other to critical, and sometimes hostile, revision. As one leading writer has expressed it, "There is a sort of natural and healthy rivalry between the two bodies which causes each to subject the measures proceeding from the other to a careful scrutiny and a destructive criticism, even though the same party may be in majority in both." [12]

So far as can be observed in a study of the activities of the legislature of 1910, there was very little such opposition between the houses. What opposition did exist partook more of the nature of humor than serious rivalry. The Albany *Argus* gives the following facetious account of occurences in the assembly upon one occasion:[13]

"The annual exhibition of wrath on the part of the assemblymen when they find the senators playing horse with their bills took place in the assembly yesterday, and the same threats of what will be done to bills of senators

[12] Burgess Political Science and Constitutional Law, Vol. II., p. 107.

[13] May 5, 1910.

were made. This is an annual occurrence, but the assemblymen seldom develop backbone enough to make good their threats, and there is no evidence that the present spineless crop of legislators will do more than make a loud noise and bluster for a few days. Assemblyman G. began the chorus of protest when he saw Senator B.'s bill on the calendar. He said Senator B., like a peevish child, because a bill he had in committee was defeated in the senate, had declared a guerilla warfare against all bills in which Senator W. was interested. He, Assemblyman G., was so unfortunate as to have W. for his senator and that when a little local bill for his home town came up, Senator B. objected to it and it was buried in the committee of the whole. Mr. G. thought the senator's bills, when they came to the assembly, should receive like treatment.

"Assemblyman H. also took the floor to declare that the House of Lords was too toplofty. He said a member of the assembly might go over there in the morning and the senator would tell him to come in the afternoon. In the afternoon he would be too busy to see him and would tell him to come at night, and then the senator would tell him when he could come around the next morning. 'There is not a senator who is the peer of an assemblyman,' shouted Mr. H., and the house applauded the sentiment."

A few days later the *Argus* recorded the fact that Senators K. and B., who had been persisting in their guerilla sniping at Senator W., mentioned above, because of their failure to get a certain bill out of his committee, had withdrawn their objections to Senator W.'s local bill. The enlightening statement was made that after adjournment Senators B. and W. were seen in conference, and probably a truce would be patched up.

Men who are desirous of obtaining legislation find it

to their mutual advantage to get together. The senators and assemblymen from a certain district are usually interested in securing the passage of many of the same measures. The usual practice is for an assemblyman to have his bill looked after in the senate by the senator representing his senatorial district.

There are always members with special measures to further with the aid of members of the opposite house, and they have no desire for a conflict. On the other hand, instead of conflict, the obvious feature is the team work between the two houses. A cursory examination of the legislative record will reveal several instances where the same amendment was reported by committees of both houses the same day, or on consecutive days, indicating corresponding pressure in both houses. For example, a certain local appropriation bill was introduced in the assembly on February 11th by the assemblyman from the county where the appropriation was to be used. On February 13th the senator from that district introduced it in the senate. On April 28th the finance committee of the senate and the ways and means committee of the assembly reported the same amendment on the same day. The bill as amended passed the senate May 10th and the assembly May 11th.

The constituencies of senators and assemblymen are practically the same, except those of the senators are larger. In most cases they are associated in the same party organization, and, with the exception of occasional sessions like that of 1912, both houses are controlled by the same party. Constituency, politics, social relations, common interests, and the instinct of effecting legislation all conspire to break down opposition and antagonism between the two houses.

JOINT ACTION

Before closing a discussion of the more formal intercameral relations, mention should be made of the joint action of the two houses. To the degree that joint action is had with regard to various matters, to that degree the legislature acts largely as one house. It is significant that upon some of those questions which required the most thorough investigation, the fullest consideration, and the greatest care in determining legislative policy, there were joint committees. There was a joint committee of the senate finance committee and of the assembly ways and means committee to investigate the financial needs and administration of State institutions. There was a joint committee appointed at the previous session to examine and consider the proposed charter and administrative code of New York City drafted by the charter commission. There had also been appointed in 1909 a joint committee to investigate the question of the regulation of telephone and telegraph companies, and one to investigate the question of direct nominations. The latter joint committee visited several of the leading States where direct primary laws were in operation and reported to the legislature.

In addition to the joint committees there were commissions which reported, composed of members of both houses and leading experts outside of the legislature. The two commissions reporting were the commission to investigate the matter of Courts of Inferior Criminal Jurisdiction in the City of New York, appointed in 1908, and the commission to investigate the question of employers' liability.

The fact that some of the most difficult work of legislation is undertaken by joint committees acting in cooperation is a significant commentary on the theory that legislation can best be accomplished through conflict between the two houses. Joint hearings are also frequently given, particularly on those bills in which there is a wide interest.

RELATIVE QUALITY OF MEMBERSHIP

Another topic, not so closely connected with the preceding, yet an important one, is the question of the relative quality of the membership of the two houses. Is the senate composed of abler and better men than the assembly, of bigger political bosses, or, as Mr. Bryce suggests, of the more adroit and practiced intriguers?

The office of senator is considered a higher honor than that of assemblyman. The term is longer, burdensome campaigns for re-election are not so frequent, the relative influence is greater, and it secures more experienced men.

In the legislature of 1910, of the fifty-one senators, twenty were old members of the senate, and twelve of the thirty-one new members had seen previous service in the assembly.[14] Nine of the old members had also served in the assembly, so, of the thirty-two experienced members, twenty-one had been advanced from the assembly. Of those twenty-one members, three had served in the assembly for seven years, two for six years, two for five years, two for four years, five for three years, four for two years, and three for one year. Sixty-two per cent. of the senators had had legislative experience previous to the current term beginning in 1909.

[14] Legislative Manual 1910, p. 584.

Of the assemblymen, ninety-five were serving beyond their first term and fifty-seven of these had been members more than one year.[15] While sixty-three per cent. were old members, only thirty-eight per cent. had had legislative experience previous to 1909, as compared with sixty-two per cent. in the senate.

Twenty-four of the assemblymen were serving their fifth year or longer, and seven were in their seventh year or longer, the longest serving his tenth year.

Of the senators, twelve were serving their third term or longer, and seven were serving their fifth term or longer, one Tammany senator serving his ninth term, but his terms were not consecutive.

Of the nine senators serving beyond a third term, four were New York City Tammany Democrats, three were from Erie County, and two were up-State Republicans, one of whom was floor leader in 1910, and the other the following year. All of the senators who served long terms were very closely identified with their party organization. Not more than perhaps one could be called a boss. They were rather loyal servants of the party organization.

Of the assemblymen who served long terms the same characterization can be made. Practically all of the Republican long-term men of both houses were allied with the "Old Guard," a term reproachfully used to designate the party group which usually worked solidly together against certain reform measures of Governor Hughes.

In respect to legislators being local bosses, there was fully as large a per cent., if not larger, of the older assemblymen who belonged in that category as there was of senators.

[15] *Ibid*, p. 635.

Longer experience is not a criterion of the better quality of the members of the senate. The two senators whose corruption was brought to light in the Allds case—one as a solicitor of a bribe and the other as a giver of a bribe, had both advanced from the assembly to the senate. Mr. Allds was serving his fifteenth year in the legislature, the time of his exposure being nine years after the occasion of the corruption charged. The two legislators, both senators, who had been in the legislature the greatest length of time, one twenty-one years and the other seventeen years, both had records which were very questionable. Both were Tammany politicians.

With respect to the older members, at least, Mr. Bryce's view seems to be well founded.

There were scarcely any members of the upper house who had distinguished themselves in any other field than politics. None of their names appeared in "Who's Who in America," and only two in "Who's Who in New York State," and the achievements described of those two were more in the nature of notoriety than related to statesmanship.

CHAPTER IV

CONSIDERATION, REVISION, AND CHECK

What is perhaps the most common argument for the bicameral principle is under examination in this chapter. Is the second chamber a check on hasty, ill-considered, and careless legislation? Does it provide for careful consideration of legislative projects? Does it, by the interposition of delay, furnish time for reflection and deliberation, making possible a better output? Does it exercise a valuable revisory function? These are a few of the questions to be inquired into.

The investigation includes, first, a quantitative survey of the work of the legislature; second, the opportunities for consideration determined from a study of legislative procedure; and, third, an analysis and classification of the actual bills which were defeated or amended by the second house.

THE VOLUME OF BILLS

A striking fact in any review of the work of the legislature is the large number of bills which is introduced each year. The mass of legislative proposals is so voluminous that serious intelligent consideration is almost impossible, and much of the legislation can scarcely be otherwise than hasty, ill-considered, and questionable.

In the regular session of 1910, there were 1,180 bills introduced into the senate and 1,755 into the assembly, a

total of 2,935 introductions. Nine hundred forty-five were introduced into both houses,—there were 1,990 different bills. In 1911, there were 3,668 bills introduced into the two houses, and in the short session of 1912 there were 2,859.

In 1910 the legislature adjourned May 27th, having been in session about four and three-fourths months. During the session usually there are only about three days a week when much real legislative work is done, except during the last two or three weeks. Many of the legislators go home Thursday evening. Most of them have their private business matters to require a part of their attention. They have many political interests to look after besides the work directly connected with legislation.

RATE OF PASSAGE

The amount of business for the time occupied is enormous and in the latter part of the session the rate at which legislation is poured forth is marvelous. In the Constitutional Convention of 1821 one member remarked that the legislative business at the commencement of the session was generally well done—that the committee on revision rarely rejected that which had been passed early in the session—but not so at the close. It is near the close of the session where there is the most congestion. By March 12, 1910, nearly the middle of the session, 135 bills had passed the assembly, and 1,015 of 1755 had been introduced. But in the remainder of the session, 976 bills passed the assembly. Up to March 12th, only fifty senate bills had passed that body and been received by the assembly.

In the last week of the session, votes on final passage

were taken on 275 bills in the senate, of which 256 passed and 19 were defeated, less than seven per cent. being defeated. In the last four days the vote on final passage was taken on 265 bills. In addition to the votes on final passage, there were also expressions of legislative will given in other ways. Twelve concurrent resolutions were passed; eleven bills were recommitted to the committee of the whole, and twenty-nine were left in the committee of the whole by action, thus defeating them. Fourteen were recommitted to committee; sixty-one were advanced through both second and third readings by unanimous consent; forty-nine were ordered to third reading; and there was also other action, such as taking from the table, refusing to take up out of order, refusing to discharge committee, recalling bills from the governor, and returning bills to the governor.

There were decisions by the senators upon over four hundred bills in four days, at least one-third of which could have had no other previous consideration on the floor of the senate.

Indicative of the tendency to acquiesce in another's bills in order not to jeopardize one's own is the fact that of the 275 bills on which final vote was taken, only forty-two had more than three votes against them, and of the forty-two, nineteen were defeated. Only twenty-three of the 256 bills which passed had over three votes in opposition. Less than one-tenth of the bills passed in the closing days of the session had any opposition to speak of. Possibly one reason for this small recorded opposition is due to the device of the short roll call. It is the custom in the New York Legislature on many bills for the clerk to call the names of three or four members and declare the bill passed by an arbitrary vote. The *Journal* records

the names of all of those present as voting in the affirmative except those who have risen in their seats and specifically announced their desire to be counted in the negative.

More rapid than in 1910 was the closing period of the session of 1912. On the day before adjournment, the number of bills on the third-reading calendar in the senate was reduced by 125. There were seventy bills left on the general orders calendar, and 219 on the third-reading calendar for the last day, not nearly all of which could be reached.

THE SIFTING OF BILLS

With the quantity of legislation which is proposed and the rate at which it is rushed through there seems little opportunity for serious consideration either in the lower house, the upper house, or both. It is interesting to see how the mass of bills is sifted, where the check is applied, and how the 1,990 proposals were reduced to 707 laws. Seventeen hundred fifty-five were introduced into the assembly, 810 of which were not introduced into the senate. Two hundred thirty-five bills were introduced into the senate alone, of which 99 passed the senate and went to the assembly, making 1,854 bills which were under consideration in the assembly. Into the senate were introduced 1,180 bills, and there were 369 bills introduced into the assembly alone which passed the assembly and went to the senate, which makes 1,549 bills which the senate had for consideration.

Of the 1,854 bills before the assembly, 627 of its own and 15 of the senate's were killed in committee—a total of 642, or thirty-four per cent. Eighty-four were

reported out of committee, but did not pass, and 1,128, or sixty-one per cent., of all the bills before the assembly passed that house. It is significant that ninety-three per cent. of all the bills reported out of committee passed the assembly.

Of the 1,549 bills before the senate, 451, or twenty-nine per cent., were killed in committee, 1,036 passed, and 62 were reported but failed of passage, either left in committee of the whole, recommitted, left on third reading, laid aside, died the last day, or were lost upon vote. In the senate, ninety-four per cent. of those that got out of committee passed, which corresponds closely with the ninety-three per cent. in the assembly. Of the entire number of bills before the senate nearly sixty-seven per cent. passed that body, as compared with sixty-one per cent. which passed the assembly. The assembly, having more members, had more unwise bills introduced.

In both houses the chief barrier to the flood of bills was the committee, the assembly checking thirty-four per cent. and the senate twenty-nine per cent. of the bills before it in committee.

The chances of a bill being defeated or left, after having been reported, is about the same in each house. In one, only six per cent., and in the other, seven per cent., of the bills reported out failed to pass. It is in the committee where the fate of a bill is practically decided, and if it is reported out by the committee it stands ninety-three or ninety-four chances in one hundred of passing that house.

It is well known that many of the bills which are introduced are not expected to get farther than the committee. If we assume those bills to be the serious ones which were either reported out of committee or passed

by the opposite house, if, for example, those bills before the senate for serious consideration were the 847 reported out of committee, and the 369 which the assembly sent over, a total of 1,216, we find that, of such serious bills, the senate passed 1,036, or eighty-five per cent. Taking the same class of bills in the assembly, there were 1,227 reported and 99 sent over by the senate, a total of 1,326. Of these 1,326, the assembly passed 1,128, or eighty-five per cent. The assembly and the senate thus have an exactly equal record in the percentage of serious bills passed, and the percentage, eighty-five, is a large one.

Surprisingly few were the bills which were lost on the order of final passage. Of the 62 bills in the senate which were reported out but failed to pass, only 25 reached the stage where they were defeated on final passage. These 25 were the only unsuccessful bills on which a record of the vote of individual senators was made, with the exception of eight or ten upon which the motion to suspend the rules to take up out of order was lost.

The impediments in the way of measures introduced becoming law seem to be very few. When in one short session in a State where the legislature meets every year, the senate passes 1,036 bills and the assembly 1,128, the situation is quite startling. In the British Parliament, with a great nation with imperial interests to legislate for, the average annual number of bills passed in a six-year period was only about 325. Of these an average of 123 were classified as public bills, and 202 as private bills. There was an average total of introductions in the House of Commons of 531.[1]

[1] Redlich, The Procedure of the House of Commons, Vol. III., p. 282.

Thus far there has been discussed the rush of bills each through its own house, and there has been a remarkable parallel in the two houses in the large percentage of bills which passed, in the acceptance of the decisions of their committees, and the small amount of restraint in the passage of bill. At a time when the danger seems to be too much legislation instead of too little, if a single-chambered legislature were to be as unrestrained as either one of the houses, there might be considerable justification for the theory that an unrestrained single chamber is dangerous to liberties.

Either house, taken alone, passed considerably more bills than both jointly passed. However, there is one feature of the present bicameral system which might be remedied in a single-chambered system, and that is the irresponsibility which the bicameral system engenders. Frequently, measures pass one house which are never expected to become law and probably would not pass if there was a serious likelihood that they would reach the statute book. They are passed with the expectation that they will be defeated in the other house or vetoed by the governor. A frequent expression heard among legislators is "put it up to the governor." Sometimes support is also given for a measure with the knowledge that it is unconstitutional and that it will be declared invalid by the courts, which serve as another check in addition to the second house and the governor. If the legislators realized that they were fully responsible, it is likely that many measures which now go through one chamber would not pass. There is a temptation to vote for a measure and avoid giving offense to some constituents when it is probable that the bill will be defeated somewhere else.

THE CHECK OF THE SECOND HOUSE

When so many bills are rushed through each house, what obstruction does the second house offer? Of the 1,036 bills passed by the senate, 69 were defeated in the assembly. Of the 1,128 bills passed by the assembly, 161 were defeated in the senate. In other words, the assembly killed six per cent. of the senate's bills and the senate killed fourteen per cent. of the assembly's bills. The senate was a greater check over the assembly's bills than the assembly was over the senate's bills. Together, 230 were defeated by the second house and 967 passed both houses. Of the 1,197 bills which passed one house or the other, nineteen per cent. were killed in the second house. Notwithstanding the double check of each house upon the other, they together did not equal the check of the executive, the mayors vetoing 36 bills, and the governor 204, making 240 which were defeated by the executive. There were also 20 which were recalled, so that, of the 967 passed by both houses, 707 became law.

Consideration or action by the second house resulted in checking some hasty legislation, but the success of the seond house in this respect does not appear to good advantage in comparison with the check of the executive. The double check of the two houses upon each other resulted in killing nineteen per cent. of the bills which had passed one house, but the executive veto was exercised on nearly twenty-five per cent. of the bills after they had been passed by both houses. The check of the second house does not seem very effective when about one-fourth of the measures passed by the legislature are of such a nature as to need checking by the executive.

It is interesting to observe how the mass of bills introduced into the legislature, numbering at first 1,990 was reduced largely by committees, then 1,128 passed the assembly, 1,036 the senate, 967 passed both, and finally, after the use of vetoes, 707 became law.

AMENDMENTS BY EACH HOUSE

The fact that bills are amended indicates more or less consideration by some members, although quite frequently amendments are used to obstruct or weaken legislation rather than to promote public welfare. In the assembly, 233 bills were amended by committee, and 113 were amended on the floor, a large proportion of the latter being amended both in committee and on the floor. In the senate, 209 bills were amended in committee and 80 on the floor. In the case of amendment, it is thus shown that more bills were amended in the assembly than in the senate.

In addition to the regular method of amendment, either in committee or on the floor, the assembly has a committee on revision. The function of this committee, whose work is done by clerks, is to free the bills from ungrammatical language, correct typographical errors, and make the bill read so as to accomplish the exact purpose of the introducer. There were 273 bills which were amended in revision. However, 15 of these measures having passed the senate as introduced, were repassed by the assembly in unrevised form.

REVISION BY THE SECOND CHAMBER

One argument for the bicameral principle is that the

second chamber acts as a revisory body, that, by amending the bills as passed by the first house, they can be improved.

The assembly amended only 18 bills after they had been passed by the senate, and two of those were cases of the assembly reamending bills which had originally passed the assembly. The senate amended 128 assembly bills. It is to be observed that the senate has a much better record in this respect than the assembly. Together, therefore, the two houses amended 146 bills, or about fifteen per cent. of the measures were amended by the opposite house. As has been shown in the preceding chapter, the amendments were concurred in with the exception of a very few cases. It is noticeable that neither house served as a revising body to the extent that it did as a destroyer of bills. The assembly amended 18, but killed 69 of the bills which had passed the senate, and the senate amended 128 but killed 161. This indicates that a second house, whether upper or lower, is not so much a means for the adaptation and adjustment of a measure as it is a means of decisive execution.

The majority of the bills passed were not changed by the legislature, but were passed through both houses as introduced. Out of the 967 bills passing the legislature, 505 passed both houses without change. In all of these cases, the legislators were content to accept the bill, including the wording and everything, as introduced. But, of these, only about two-thirds, 339 of the 505, became law. Eighty-one were vetoed, 21 were killed by mayors, 12 were recalled and not returned to the governor, 22 were recalled and amended and then became law, 9 were recalled but later vetoed, 6 were recalled, amended and then vetoed, 6 were recalled but not changed and became law. These 505 bills, it must be remembered, had

all passed both houses without amendment as introduced, but the fact that 58 of them were recalled for one purpose or another, and also that 102 others were vetoed, indicates there should have been more consideration before they went through the legislature the first time. It also indicates that the second house was not a very effective check on hasty legislation when, after they had passed both houses, 58 had to be recalled and so many vetoed.

CAREFULNESS OF CONSIDERATION

We have seen the extent of the check of the second house on the quantity of legislation and the amount of the revision by the second house as indicated by the number of amendments, and have observed the comparatively small effect in both cases. The undesirable quality of its work has been suggested by the necessity of the large use of the executive veto.

Careful consideration of legislative projects as a whole is rendered very unlikely by the immense amount of matter for consideration and the rapidity with which it goes through the legislature. It is almost physically impossible for one person to read carefully all the bills before the legislatuare. Including the reprints, in 1910 there were 2,687 bills in the assembly and 1,683 in the senate. There was one new member of the assembly who, three weeks after the opening of the legislature, admitted he tried to read all bills as fast as printed. An Albany newspaper remarked, "He will get over that habit after awhile, for he will come to understand that the more he reads of nine-tenths of the legislation the less he will know about it, and much of it is not worth the reading and never gets farther than introduction." If he had read merely all

of those bills which were reported out of committee, he would have had to read 1,311, and the reprints after amendments would have made almost 2,000. Toward the close of the session there are stacks of bills on the members' desks from two to three feet high.

Professor Reinsch, in discussing this situation, says, "When it has become physically impossible for a legislator to give a careful reading to all the legislative bills proposed, even should he use the entire working time of the session, it is of course hopeless to expect the due consideration, weighing, and sifting of all the measures. Instead of fulfilling the ideal of rationally and thoroughly considering all proposed legislation, the work of the legislator ordinarily resolves itself to seeing that his own bills may receive a fair consideration, and to making such arrangements with other members that, by mutual assistance, their respective measures may have some chance of passage. In such arrangements the merits of individual bills are a minor consideration, the principal point being to ascertain what members are for the proposed measure and what they are able to do for other members in return for the assistance of the latter. It is therefore not surprising that our legislation should in general be haphazard, inconsistent, and often absolutely incompatible, and that there should be absent from it the effective correlation of new measures with the existing body of the law." [2]

The great majority of the bills are of small importance and a large share are of a local character. The Citizens' Union in 1907 published a table which showed that of the 3,185 bills introduced, 534 were bills particularly affecting New York City, and eight other cities had a total of 140 local bills relating to them.

[2] American Legislatures and Legislative Methods, p. 307.

Other classes of legislation having the largest number of bills introduced were: Amendments to the Civil, Criminal, and Penal Codes, 230; Railroad Law and Railroads, 171; Appropriations, 127; Forest, Fish and Game Law Amendments, 102.

In order to secure adequate consideration for the important measures before the legislature it is confessedly a very important problem to devise some plan whereby the number of bills will be lessened and the legislature will not be encumbered with a mass of matters of minor importance.

Opportunities for Consideration

Supposing that the proposals before a legislative body are none too many for a reasonable amount of consideration, it is important to study the stages in the progress of bills through the legislature in order to see what opportunities for consideration there are, and to what extent the second house gives additional consideration.

LEGISLATIVE PROCEDURE

In the preparation of bills, it must be remembered that the large share of them are not prepared by wise and responsible solons or even under their direction by competent bill drafters, but that they are prepared at the instigation of private interests which are anxious to have them passed, and given to a legislator to introduce.

There are several methods of introduction. In the assembly, the ordinary method is to drop the bill into the bill box. The more formal method of rising and asking unanimous consent to introduce a bill is seldom used

except where the introducer desires to progress the bill by asking unanimous consent "that the bill may now have its second reading." This requires a roll call, but, as has been mentioned, short roll calls are customary, and if there is no objection, it is advanced to third reading. One objection, however, will prevent its advancement. This advancement to third reading omits the committee stage and thus eliminates consideration by the committee.

The bill having been introduced, the Clerk's Manual, prepared by the clerks of the senate and assembly, gives the following suggestions to the new legislators concerning looking after it:[3] "Something more than the mere introduction of a bill is necessary on the part of the member. As soon as it is printed it will be placed on the files of the committee to which it was referred, and the introducer should then appear before the committee and ask that the same be reported. If it is a bill to which there is no opposition, it will usually be reported without any trouble, but if there is opposition, the opponents may apply for a hearing on the bill. In that case, the introducer should appear before the chairman on the day of the hearing and introduce to the chairman of the committee such persons as appear for and against the measure. . . . It often happens that, between the time of the introduction of a bill and its consideration by a committee of the assembly, it is discovered that certain amendments are necessary. In such a case, the introducer should have prepared such amendments and present them to the committee."

Committee Stage

It is in the committee that most of the consideration which a bill gets is received. The house as a whole seems

[3] Pages 575-6.

to be depending more and more on the judgment of the committees. In 1910 in the assembly ninety-three per cent., and in the senate ninety-four per cent., of the bills reported by the committees passed. The committees are appointed partially with reference to their special qualifications with regard to the subject to be considered, but especially with reference to what their action toward certain important bills shall be. The committee is primarily an agent of the party with reference to those bills in which the party is interested. Notwithstanding the fact that the decision of the committee becomes, in so large a share of the cases, the decision of the house, there is little provision to safeguard any real deliberation by the committee. The chairman has very large discretion in his handling of a bill. There is no procedure by which the committee is governed. There is no calendar, no provision to determine when or how soon a bill shall be considered. The chairman calls meetings on short notice, he decides what matters shall be considered at each meeting, what persons shall be heard, and what postponements allowed. Hearings, even after promised, are often postponed, not infrequently without good reason, and much to the discomfiture of those who have come from a distance to be heard. An illustration of the power of a committee chairman and the influences behind him is given in the following extract from the *Reform Bulletin* of April 5, 1912, the organ of the New York Civic League, which gives a weekly report concerning measures relating to moral reform in the New York Legislature.

After referring to the fact that the Anti-Saloon League, which had been advocating a local-option bill for third-class cities, had been fooled, deceived, and outgeneraled by the liquor men and the bosses at every move

they made to advance their bill, and that the chairman of the excise committee was reported to be ruled by the will of a certain big brewer in his district, the *Bulletin* said: "A strong effort was made to get a hearing early in the session for the city local-option bill. But about half of the legislative session passed by before the Assembly Excise Committee met and organized. Why such an unprecedented delay, especially in a short session? Ask the chairman and the Speaker. At last, February 27th was fixed as the date for the hearing on the city local-option bill. But even after that, the hearing was postponed a week, then postponed still another week, so that the hearing was not finally held till March 13th. But as all assembly committees were to be discharged on March 19th except the rules committee, which was to take full control of the assembly machinery from that date, there was no time for the Assembly Excise Committee to consider and report out the bill, as the hearing was held on the last regular meeting day of the committee before it was to be discharged. The only time for the excise committee to discuss in executive session and vote on reporting the local-option bill out, was after the long hearing. But all the members of the committee were not present at the hearing, and at the close of the hearing some members present had 'important engagements' and could not stay to the executive session of the committee. But after hard urging a special session of the committee was called to consider the matter. In the meantime the chairman had a long talk with the Speaker, and the Speaker had a long talk with Boss Barnes, and Boss Barnes doubtless had a long talk with certain big liquor men who always make large contributions to the Republican State Committee, one or two of whom are members of the New York Re-

publican State Committee, and the word that came back down the line was to kill all temperance bills in the committees for two reasons: First, if they got out of the committees, they might possibly be forced to a vote before the rules committee took charge, and the bill might pass; and, second, even if they did not pass, there would be a roll call and it would be published how each man voted, and that would cause the defeat of some Republicans at the next election."

The committee chairman has a wide power over the action of the committee, but too frequently the determining factor is not the consideration of bills upon their merits, but the influences suggested by the above extract. Any discussion of the bicameral principle or of the abstract subject of the amount of consideration given to measures is decidedly lacking in the facts of the actual situation if it neglects such factors as above suggested.

"The Report of the Legislative Voters' Association" regarding the legislative session of 1909 says:[4] "The only real consideration of most measures takes place in the committees, whose favorable reports are usually equivalent to favorable action by the houses. In the committees, the chairman have general control of the calendars and such influence that they are rarely overruled. Log rolling bargains increase the power of these committee chairmen, who, under ordinary conditions, are the real makers of legislation. While a bill upon the fate of which great public attention is focused cannot ordinarily fail to receive consideration by the committee, the chairman can prevent consideration of other measures of less public interest. Consideration and report of these lesser meas-

[4] Page 5.

ures, including, in all probability, local bills of special interest and political importance to members of the committee, often is the price of votes in support of the chairman."

It is the committee stage where consideration is supposed to be given, but if amendment is to be considered any criterion of consideration, only 233 out of the 1,311 bills reported out by the assembly were amended by the committee, and only 209 out of the 1,123 reported out in the senate, were amended by the committee. In the assembly, seventeen per cent. of the bills reportd were reported amended and in the senate eighteen per cent. Compared with those amended on the floor, there were over twice as many amended in the committee as on the floor, the assembly amending about eight and one-half per cent. on the floor and the senate only seven per cent.

The number of bills amended is but a distant approximation to consideration. It does not indicate how much amendment was made, still less does it suggest the quality of it. The chief value is that it shows that the bills amended were not rushed through without at least suffcient attention being given them to change them.

The committee is supreme over bills which have passed the other house; the fact that a bill has passed one house gives it no superior standing in the second house. One hundred eighteen of the 161 bills which had passed the assembly but were defeated in the senate were killed in the committee.

In the matter of amendment as well as in the matter of passage, the house accepted largely the judgment of the committee, but not quite to the extent it did in the matter of passage. In the assembly, ninety per cent. of

the successful bills passed without amendment on the floor and in the senate about ninety-two per cent. In over nine cases out of ten both with respect to amendment and with respect to passage, the recommendation of the committee becomes the action of the house. It is thus in the committees where provision for consideration and wise judgment should be safeguarded. On too many bills the consideration amounts merely to a vote, yes or no, as to whether the bill is to be reported out.

Readings of a Bill

After being reported from a committee in the assembly, the bill is placed on the second-reading calendar. In the senate, bills reported from the committee are ordered to the committee of the whole, which corresponds to the second-reading stage in the assembly. The calendar of the committee of the whole is called the General Orders Calendar. It is upon the second reading that it is read, section by section, and it is here that amendments are most frequently made, and there is opportunity for discussion and debate. It is generally recognized that there are few questions on which a debate changes many votes. The issue has usually been settled either in committee or by the party leaders.

In listening to the debates which take place in the State legislature one is impressed with the comparatively little discussion of the merits of the proposed measure. The conspicuous features of the debates are the constant reflections which, in some form or other, are made upon the opposite party.

Frequently bills are advanced to third reading by unanimous consent. In such cases, there is omitted the

discussion stage of the second reading. By unanimous consent, any rule or rules of either house may be suspended, changed, or rescinded, subject only to the few restraints of the Constitution.

In the assembly, after passing second reading, a bill goes to the committee on revision, and is then engrossed and put on the third-reading calendar. In the senate, the bills are taken up in their order on the calendar, except toward the close of the session it is the custom to advance bills out of their order under suspension of the rules, which may be done by unanimous consent or, on giving one day's notice, by majority vote. In the assembly, in the last few weeks of the session, the rules committee determines what bills shall be put upon the calendar, unless there be a two-thirds vote of the assembly for discharging the rules committee from consideration of a particular bill, and this is seldom secured.

The Assembly Rules Committee has power to take a bill from a committee and place it immediately on the order of final passage. It may also amend a bill in any particular. The rules committee thus supplants all other committees. The following editorial from the Albany *Argus* of February 21, 1910, states the situation tersely: "The Assembly Rules Committee of six men, of whom two are customarily of the minority party, absolutely controls legislation during the closing days of the session. In theory there are six men on the committee, but as the two Democrats are a negligible factor, the four Republicans are the only ones to be considered; and since three votes can hold a bill from being reported to the assembly, the speaker, who is the chairman and who always names his trusted Republican lieutenants, the floor leader and two others of his close personal staff, as his associates, is

really the committee on rules. This committee can report any bill it chooses and put it on the calendar, no matter if it has been beaten in the regular committee. It gives no hearings, and it takes a two-thirds vote to discharge the rules committee, which is equivalent to saying that its decisions are final. What it puts on the calendar passes, and what it leaves off the calendar is dead. There are one hundred fifty members of the assembly, but in the all-important closing days one hundred forty-seven are useless."

The Senate Rules Committee also has the power, which it does not so often use, to bring up for passage, out of the regular order, bills favored by the leaders. The members of the rules committees of both houses also wield great influence, not only because of the power of the rules committee, but also because of their position, the senate committee being composed of the leaders of the majority and minority and the chairman of the finance committee, to which are referred all bills involving appropriations.

Upon the third reading, unless a demand is made therefor, the bill is not read through, but the final section is read, the usual formula being: "This bill shall take effect on and after its passage," and the roll is called, usually the short roll call. The Constitution provides, "upon the last reading of a bill no amendment thereof shall be allowed and the question upon its final passage shall be taken immeditely thereafter and the yeas and nays entered on the journal."[8] This provision is circumvented by a liberal interpretation of the Constitution, by which the last reading is interpreted to mean after the final section is read. This makes it possible to amend a bill

[8] Article III., Section 15.

upon third reading. The method of amending on third reading is to move that the bill be recommitted to the committee to which it was originally referred, with instructions to report forthwith with certain amendments. If this motion is adopted, it amends the bill accordingly, and, as a matter of fact, it never goes to the committee, nor does the chairman of the committee make any report thereon. In the *Journal,* instances are on record[6] where bills have had as many as fifty amendments passed in this manner on third reading without any discussion whatever, contrary to the spirit of the Constitution. This method of amendment on third reading is a method of giving less consideration instead of more, because it does not enable the members to grasp the full effect of the amendments which are proposed and rushed through. However, after amendment in this manner, it is possible to defeat the bill, as the final passage cannot take place until it has been printed and upon the desks of the members at least three calendar legislative days.

When it is desired to merely debate the bill on third reading, and not to amend it on the floor, the usual motion is to "strike out" the enacting clause. After it has been debated it is usual for the mover of the motion to strike out to withdraw this motion and permit the bill to go to a final vote.

The procedure is thus similar in each house, the chief difference being that the committee of the whole of the senate corresponds to the second reading of the assembly.

PARALLEL COURSE IN THE SECOND HOUSE

After a bill passes one house it is sent to the other and goes through a parallel course. It is this second consid-

[6] Senate Journal, 1911, p. 2044.

eration which is given as the chief argument for the bicameral system. By having two houses, a measure is considered twice as often as it is in one. There are twice as many stages which it has to pass through. It will stand a greater chance of being checked or modified, and it is assumed that the longer gauntlet a bill runs the less danger there will be of undesirable legislation getting through. But the overlooked factor is that the prevailing attitude of a legislature seems to be to help along as many bills as possible, instead of making the running of the gauntlet difficult.

BICAMERAL SYSTEM DOES NOT INSURE DOUBLE CONSIDERATION

There are several respects in which the bicameral system does not insure a double consideration.

Many bills are rushed through without discussion at all. In 1912 in the senate practically all of the bills introduced by the majority floor leader were advanced by unanimous consent to third reading upon introduction. Many bills are skipped through some of these stages merely upon the recommendation of an influential member.

Frequently there is a tendency to accept what the other house has passed without examination. The "Report of the Committee on Legislation" of the Citizens' Union for 1910 cites a conspicuous case of this character.[7] A leading senator presented some undesirable amendments which had been handed to him by a leading assemblyman who had told him that the bill had been considered in the assembly and that the amendments were satisfactory to

[7] Page 27.

the friends of the bill. The senator, relying upon the statement of the assemblyman, presented the amendments, but, upon learning their real character, upon the following day disavowed responsibility for them and, although they had been accepted by the senate in reliance upon his word, he moved to strike out the amendments.

The division of the legislature into two houses lessens the responsibility of each. It is easier to vote for an undesirable measure and thus avoid offending the supporters of that measure if it is hoped that it will be killed in the other house. More careful action would likely be taken if it was realized that the final vote in one house would be the conclusive act of the legislative branch.

The second chamber does offer additional opportunities for consideration, but in practice comparatively few bills are modified at many stages, although occasionally there are bills which are at almost every stage. An illustration of a bill which was amended at all but one of the stages in each house was a bill relating to employment agencies introduced in both houses on February 28, 1910, and referred to the general laws committee in the assembly and the judiciary committee in the senate. After a month, on March 31st, a substitute bill was reported in the assembly and recommitteed. On April 14th it was reported amended and recommitteed. April 21st it was reported. April 22d it was amended on second reading and advanced to third reading. April 28th it was amended on third reading. May 3d it passed the assembly. May 4th the assembly bill was referred to the judiciary committee of the senate. May 12th it was reported amended, advanced to third reading and then recommitteed. May 17th it was amended and recommitteed. May 20th it was reported and restored to third reading. May 24th

amended on third reading and passed under an emergency message from the governor. May 25th it was returned to the assembly and referred to the general laws committee and the rules committee. May 26th, reported. Senate amendments concurred in, was again amended and passed. On May 27th, the last day of the session, the senate concurred in the assembly reamendment, passed the bill, and sent it to the governor, who signed it June 25th. There are few bills which are given so much attention and a study of those bills which are amended the most shows that they were chiefly those bills which had influential interests which were opposing them at every step or endeavoring to get the least objectionable compromise.

Of the bills which were killed in the second house, the death-dealing action in about three-fourths of the cases was taken in committee rather than at later stages. Of the 161 assembly bills killed in the senate, 118 were killed in committee, and of the 69 senate bills defeated in the assembly, 61 were killed in committee. Thus, of the 230 bills killed by the second house, only 51, less than one-fourth, got beyond the committee stage in the second house. The succeeding stages were thus unutilized except in only a comparatviely few cases.

About seventy-eight per cent. were killed in committee. Nine per cent. were killed on second reading, and five per cent. on third reading. Only 11 bills out of the 230 reached the order of final passage, and five were bills which passed the first house too late for consideration by the second.

There being three stages in which a bill can be considered in one house, the question arises whether a second hasty consideration *de novo* by another body is better than thorough consideration by one. We do not have

the data for an inductive comparison, but from the standpoint of consideration the argument seems quite strong in behalf of those provisions which would give opportunities for fuller knowledge on the part of those who have already become somewhat acquainted with the subject, and of such provisions as would lessen the mass of bills before the legislature, increase the responsibility of the legislator, give publicity to all steps in legislation, and provide adequate time between the stages for public opinion to exert itself.

INTERPOSITION OF DELAY

This leads to one of the strongest arguments for the bicameral system—that it interposes delay between the introduction and final adoption of a measure. It is claimed that the passage through one house serves notice of its impending passage through the legislature. It gives publicity to the measure. If a wild bill, it may arouse enough public attention to stop it in the second house. It stimulates those who oppose it to put forth additional efforts in the second house. It also encourages its friends to promote it more aggressively.

It can be answered that, so far as the prospect of its impending passage is concerned, the reporting out of committee should serve sufficient notice, as over nine-tenths of the bills reported out pass.

Also, it is by no means always the case that the passage of a bill through two houses grants much delay. There is no provision requiring an interval to elapse between passage by the two houses, although there is a constitutional provision requiring a three-day period in which the bill shall be upon the desks of the members.

It has been shown in the preceding chapter that the spirit of the constitutional provision is circumvented in the second house by the device of having the bills filed upon the desks of the members in both houses at the same time. The three-day provision which requires time in the first house is thus reduced to a formality in the second.

There is no constitutional provision to prevent the rushing of bills through the second house almost immediately after passage by the first. There were a number of cases in 1910 where a bill passed one house on one day and the other house the following day.

In some cases there is a delay making possible a defeat in the second house. One of the most conspicuous examples of this in the legislature of 1910 was the case of the Sunday baseball bill. It was passed by the assembly on April 26th. There was an active agitation conducted against it and it was defeated in the senate on May 24th. However, the chief organ in opposition to the bill warned the opponents of the bill of the danger of its passage when it was reported out of committee. It passed the assembly by a bare majority, receiving only seventy-six votes. In the senate it received seventeen votes.

The Check of the Second House Judged by the Bills

As has been stated, 69 bills passed by the senate were killed in the assembly and 161 bills passed by the assembly were killed in the senate. The nature of the check of the second house can best be judged by an analysis and classification of these bills with a more detailed history of a few more important ones.

SENATE BILLS DEFEATED BY THE ASSEMBLY

Of the 69 senate bills defeated in the assembly, 15 were amendments to the Code of Civil Procedure, most of them minor amendments relating to appeals, costs, exceptions, and court proceedings. Nineteen other bills proposed from one to three amendments each to nine different codes, few of them being important. For example, one amendment to the Forest, Fish, and Game Law affected the open season for squirrels, one to the county law related to the power of the board of supervisors to appoint a clerk for its committee on finance, one to the poor law provided for the relief of soldiers, sailors, marines, and their families, and two to the printing law provided for the publication of certain reports.

There were about twelve local or special bills, such as one relating to the compensation of supervisors of Rockland ounty; one authorizing the board of assessors of the City of New York to estimate, determine and allow damages sustained by the property of a certain woman in the Borough of Brooklyn by reason of the opening and grading of Jerome Street—there were three such private-claim bills; another special bill provided for uniform text-books for St. Lawrence County with certain exceptions. Other bills provided appropriations for a dam across a river at a certain place, a bridge at another, and one bill called for an experimental farm in one of three counties specified, the three counties being in one senatorial district. Several of the bills defeated were apparently good bills, but ones for which there had probably not been sufficiently pressing demand, such as provision for extension courses for teachers at the College of the City of New

York, children's playgrounds in Brooklyn, and dental stations for school children in New York City. Only three bills involved a charge on the treasury, and the total amount was small. The assembly was a very weak check on the senate bills involving appropriations. Possibly three or four were suspicious bills, but few can be put in that class.

The conspicuous bills which were defeated by the assembly were the Cobb Compromise Primary Election Bill, the Income Tax ratification resolution, and one of the Anti-gambling bills.

The chief conflict in that session of the legislature was over the direct primary bills. There were four prominent bills before the legislature—the Democratic bill, which was decisively defeated; the Hinman-Greene bill, which was supported by the friends of direct primaries, including the governor, but which was defeated by narrow margins in both houses; the Meade-Phillips bill, which was one which was prepared by the joint committee appointed at the previous session to investigate the question of direct primaries. The committee had been packed in opposition to direct primaries, and their bill provided for the retention of the convention system. This bill passed both houses, passing the senate two days before adjournment. Governor Hughes, before the bill reached him, sent a special message saying the bill was "not a grant but a denial of needed primary reform," and that he would veto it, and expressed the hope that before adjournment the legislature would pass a suitable primary measure. The senate Republicans then held a caucus and voted to support the Cobb Compromise bill, a bill which had been introduced into the senate three weeks before by the senate judiciary committee. It contained most of

the features of the Hinman-Greene bill, except that certain county officials in New York City were exempted from its provisions. It passed the senate on the day before adjournment by a vote of thirty-four to thirteen. The assembly held a night session the same day and defeated it by a vote of forty-six for and ninety-four against. An extra session of the legislature was called a few weeks later to deal with the matter of direct primaries and the same bill was defeated in both houses, in the assembly by a vote of eighty to sixty-three, and in the senate by a vote of twenty-five for and nineteen against—not having a majority of the members elected. It is not likely that it would have passed the senate in the regular session if some senators who voted for it had not been quite certain that it would be defeated in the assembly.

The difference between the two houses on this bill was therefore not a real one. The second house served not as a check but served rather to lessen the responsibility of the first house.

Another conspicuous bill which the senate passed but the assembly failed to pass was the concurrent resolution ratifying the proposed Income Tax Amendment to the Federal Constitution. It was the closest measure in the legislature. It passed the senate by a bare majority and lacked only one vote of a majority in the assembly. In fact, seventy-six assemblymen voted aye, but one was induced to change his vote before the result was announced. So, in this case, the two houses were almost equally divided, one barely passing, the other barely defeating. There was an unusual circumstance in connection with the Income Tax resolution in that Governor Hughes sent a special message on this subject, on which he had no veto, urgently recommending that the amendment be not rati-

fied. The action of the second house was thus in harmony with his wish.

One of the Anti-Racetrack Gambling bills which had passed the senate was killed in the assembly rules committee. Of the four such bills advocated, the three most directly affecting gambling at the racetrack were passed, but a fourth was killed, the rules committee probably thinking that they had exhausted their capacity with reference to moral legislation in letting three of the four measures pass. A bill prepared by the committee of fourteen relating to liquor regulation in New York City was also stifled in the assembly rules committee.

Taking into consideration all of the sixty-nine bills which were passed by the senate and not passed by the assembly, it cannot be said that the second house exercised a very material check. The assembly passed 1,128 bills but disagreed with the senate on only 69 and most of those not very important bills. Seventeen of the 69 bills not passing the assembly were passed through the senate during the last three days of the session. Some of these would have likely passed the assembly if there had been more time.

There were a number of the 69 bills for which there was no need that they should be enacted into law. But the same might be said of many of the 967 bills which did pass both houses. There were a number of local and special bills, but there were many others of a similar character which did pass.

Very few of the defeated bills could be called bad or vicious bills if the standard is to be gaged by the mass of bills which succeeded. In this case the second chamber could scarcely be called a check on bad bills. It might be considered to a limited degree a check on unnecessary

bills, but in this respect, both houses together have not proven as efficient a check as the governor.

As between a check on bad bills and an obstruction to good bills, we have seen that the second chamber failed to pass some good bills, although the criterion of judgment between which are good and which are bad of these bills is very evanescent. The probably sound conclusion is that it makes little difference whether more or fewer of these bills should have passed.

ASSEMBLY BILLS DEFEATED BY THE SENATE

Of the 161 bills which passed the assembly but were defeated in the senate, the proportion of local or special bills was over twice as large as the senate bills defeated in the assembly, about sixty being of this character. Several were bills framed as general laws, but designed to meet a specific local situation. There were also a large number, about sixty, carrying amendments of more or less importance to the existing statutes. There were nine bills proposing amendments or additions to the Penal Law, the more important of which related to such subjects as carrying firearms, unauthorized use of automobiles, and selling diseased horses. There were eight proposed amendments to the Forest, Fish, and Game Law, mostly of minor importance; 7 to the Code of Civil Procedure; 4 to the Village Law; and from one to three amendments to various other laws. It is noticeable that few of the bills defeated by the senate were very important and none compare with such measures as the Income Tax resolution and the Direct Primary Bill.

Ten bills carried appropriations, several for monuments or for purchasing historical sites. About twenty-

two bills affected the duties of local officials or their salaries, and seven related to the election laws.

We have seen that, of the bills coming from the senate and killed by the assembly, almost none could be classed as distinctly undesirable measures. But of the bills passed by the assembly and defeated by the senate, several were clearly of a questionable character. Such was the Tenement House Bill, which would have greatly weakened the existing statute. Another was the Sunday Baseball Bill. Another undesirable bill was the so-called Death Avenue Bill, relating to the removal of railway tracks from grade on the west side of Manhattan. With the help of the assembly organization, a bill favorable to the railroad was passed in the assembly on the last day, but was not passed in the senate owing to the nearness of adjournment. Its opponents, however, afterward stated that it would likely have been passed by the senate if the time had not been so short.

Twenty of the 161 bills passed the assembly during the last three days of the session, and some of these would have probably passed the senate if there had been more time. Several others of the 161 were bills which passed the legislature in another form. There were several desirable bills passed by the assembly which the senate failed to pass, among which might be classed the Uniform Divorce Bill, and one prohibiting members of the legislature who are lawyers becoming attorneys for any person or corporation interested in any legislation pending in the legislature.

Among the more prominent of the other bills defeated by the senate were proposed constitutional amendments relating to biennial sessions; to doubling the term of legislators; and one relating to the adoption of con-

stitutional amendments, making necessary a two-thirds vote in each house instead of a majority. Other bills included one providing for a playground commission, another a commission on the distribution of population, another establishing a State board of commerce and industry and another relating to the collection of criminal judicial statistics, which was lost by vote on the last day.

After examining all of the bills killed by the senate, it appears that the senate has in one respect a slightly better record than the assembly in that it defeated a few of the assembly's undesirable bills. But the superiority is so small as to be almost negligible. The senate, however, defeated a few good bills. From a numerical standpoint there were more than twice as many bills checked by the senate as by the assembly, the total number being quite significant. But most of the measures were of small importance. There were very few leading measures passed by the assembly on which the senate disagreed.

Judging the check of the bicameral system by that of both houses combined, it appears that numerically it is quite significant. But with a few exceptions most of the bills defeated were of minor importance. Those writers are justified who claim that one house passes hasty, unnecessary, and ill-considered measures. The legislators appear to exercise comparatively little restraint in letting bills pass. The review by the second house does succeed in stopping a considerable per cent. of the measures. On the other hand, most of the bills thus checked are minor ones, and if the members of the first house were more responsible for checking the bills perhaps not so many would pass one house as at present.

Although the two houses combined checked 230 bills, they apparently did not defeat enough. The executive

was impelled to use the veto on 240 bills additional, more than both houses combined. Among the vetoed bills were included more which could be classed as suspicious or undesirable or bad bills than there were those of this character which were checked by both houses combined.

REVISION BY THE SECOND HOUSE

It is practically impossible to measure accurately the character and quality of the amendments by the second house in the legislature as a whole. There were 18 of the senate bills amended by the assembly and 128 of the assembly bills amended by the senate. However, examination was made to determine what amendments were made to the leading bills in the second house. A carefully selected list was made of the thirty-two leading bills which were passed by the legislature. Of these thirty-two leading bills, only seven were amended by the second house. All of these seven were bills which had active private interests arrayed against them which sought to modify their severity rather than perfect them from the standpoint of public welfare. They included such bills as the public service commission's bill, the Callan motor vehicle bill, regulating automobiles; a bill providing for the filing of campaign receipts and expenses, and a Lloyd's insurance bill. In these cases the tendency of the second house was to weaken rather than to strengthen, and the prominent factor in the legislation was the outside pressure rather than disinterested consideration.

In such situations it is obvious that the important consideration in legislation is not the conflict of the two chambers but the pressure of the forces which are advocating or opposing the proposed measures.

CHAPTER V

THE CHECK OF THE EXECUTIVE AND THE JUDICIARY

Experience has shown that the check of the second house is not efficient, and that some further authority is needed to pass upon legislation. In the early period of our history when most of the arguments advocating the bicameral principle were brought forth, the executive veto was little used, and also the practice of the judiciary in declaring laws unconstitutional was little developed.

THE GOVERNOR'S VETO

In 1788 Massachusetts was the only State which gave the governor the veto power.[1] In New York he was associated with the four members of the Council of Revision in its exercise. In forty-three years there were only one hundred sixty-nine bills vetoed.[2] At the present time, all the States but one give the governor the veto power. While there has been much discussion of the decline of representative assemblies, and many constitutional provisions to limit them, there has been a large expansion of the functions of the governor. The governor is regarded as the representative of a State-wide interest, while the legisators have evidenced the fact that too many

[1] Bryce, The American Commonwealth, 1910 ed. Vol. I., p. 557.

[2] C. Z. Lincoln, Constitutional History of New York, Vol. I., p. 744.

of them are limited to local interests. "In large affairs, affecting all the people, they have lost their initiative, because their time and strength are taken up with the petty interests of their constituents. For them they run errands, seek offices, work for local appropriations. Somebody else has to take the broad view, to look after the Nation or the State, while they are absorbed with Buncombe County or Podunk. And this somebody is getting to be more and more the directly elect of all the people. To a president or governor, thus chosen, all the people are coming to look increasingly, not merely for administration, but for impulse and driving power in legislation." [3]

Mr. Bryce says that the executive is regarded by the people as an "indispensable check, not only upon the haste and heedlessness of their representatives, the faults which framers of the Constitution chiefly feared, but upon their tendency, a tendency whose mischievous force experience has revealed, to yield either to pressure from any section of their constituents, or to temptations of a private nature." [4]

The veto itself suggests that the check of the second house has not been well performed. The large number of cases in which the veto needed to be exercised is an indication of the folly of depending on a second chamber for exercising the proper check. In 1910 the governor vetoed 204 bills. But indicative that that was not an exceptional number due to the unusually high character of the governor was the fact that in 1911 the governor vetoed a still larger number of bills, 252.

The significance of the number stands out when it is

[3] Mr. Gamaliel Bradford in the Nation, quoted in Beard's Readings, p. 443.

[4] American Commonwealth, Vol. I., p. 60.

called to mind that from 1789 to 1885 there were only 132 vetoes by the president in the ninety-six years, and omitting the administrations of President Cleveland there were only 196 presidential vetoes from 1789 to the administration of President Taft.[5]

In a single year the vetoes of the governor of one State are more numerous than all the presidential vetoes of all the presidents, omitting one.

THE CHECK OF THE MAYORS

In addition to the governor's veto, the New York Constitution provides that after any bill for a special law, relating to a city, has been passed by both branches of the legislature, it shall be transmitted to the mayor of the city affected. An opportunity for public hearing is given, and within fifteen days thereafter the mayor shall return the bill with the mayor's certificate stating whether the city has or has not accepted the same.[6] This, in effect, gives an opportunity for the veto of such special city bills by the mayor, although bills may be again passed by both houses of the legislature by a majority vote. In 1910 there were thirty-six such bills not accepted by the mayors which did not become law. Only one bill not accepted by the mayor became law by repassage. Including these thirty-six, there were two hundred forty bills which were vetoed by the executives. We have seen that there were sixty-nine bills which, having passed the senate, were defeated in the assembly, and one hundred sixty-one bills which, having passed the assembly, were defeated in the senate, a total of two hundred thirty. So the check of

[5] *Ibid,* p. 59.

[6] Article XII, Section 2.

both houses combined was less than the check of the executive.

Not only was the number of bills vetoed large, but the bills vetoed were of a much more vital character.

COMPARISON WITH THE CHECK OF THE SECOND HOUSE

A comparison of the bills checked by the executive with those checked by the second house shows that the quality of the check exercised by the governor was far superior. Many of the bills defeated in the second house, especially those defeated by the assembly, suggested a hit-or-miss method of dealing with the bills and that there was little discrimination between those which passed and those which were left, other than that they were subject chiefly to the discrimination measured by the political influence behind them. On the other hand, the check of the governor showed a careful choice and a comprehensive grasp of the needs of the State, and a wise elimination of the undesirable and unnecessary, hasty, or ill-considered bills.

APPROPRIATION BILLS

Of the two hundred four bills vetoed, forty-eight or about one-fourth of them were appropriation bills. There were only thirteen direct appropriation bills defeated by the second house, the senate and assembly combined. In numbers there were thus nearly four times as many appropriation bills checked by the governor as by the second house. The total amount of appropriations not approved by the governor was over $4,713,000, while the bills defeated by the second house aggregated only a

direct appropriation of about $360,000. The governor reduced the appropriations thirteen times as much as the second house. This is assuming that the second house did not decrease the appropriations in the leading supply bills which it is fair to assume that it did not. It is more probable that they were increased. The governor discriminatingly vetoed two hundred fifty-two items in the six leading bills, the general appropriation bill, the annual supply bill, and the four other leading bills for the support of the State institutions. In reality there were about two hundred ninety-four appropriation items vetoed by the governor. Outside of the six leading appropriation bills the vetoed bills amounted to about $1,963,000. In comparison with the governor, the check of the second house in the matter of appropriations seems small indeed. In the matter of vetoed appropriations, 1910 was not an exceptional year, as in 1911 the governor vetoed appropriations amounting to $5,500,000, and in 1909 the vetoes aggregated $4,488,886.

The following newspaper item gives an interesting sidelight on legislative appropriation making: "Leader Merritt of the assembly was in a confidential mood when he addressed the assembly the other day on the final passage of the appropriation bill. Many appropriation bills, he said, were passed by the legislature which were never intended to become laws. The cleverness and good fellowship of some of the members, and the friendships they made, he said—what he called the personal equation—enabled them to get almost any appropriation passed for almost any amount. The inference was that the governor was expected to veto it. Then he went on to defend Governor Hughes for vetoing a large amount of appropriations last year. It is well known that last year the

legislature passed the Saratoga Springs reservation bills in the confident belief that the governor would kill them." [7]

CLASSIFICATION OF VETOED BILLS

There were fifteen or twenty suspicious or undesirable bills or vicious bills or more than twice as many of this general character as were killed by both houses. They included such bills as a peculiar one authorizing the City of Albany to spend $2,000,000 in buying certain lands for a park, a proposition which evoked vigorous protest from the citizens; another relating to grants of public lands under water, which grants were calculated primarily to enure to the benefit of a certain railroad company; another overriding the Civil Service Law, and another very suspicious measure to incorporate the World's Bible League—a corporation of very large powers—a measure fostered by a notorious Tammany senator.

About one-third of the bills vetoed were amendments to various laws, a number of which were aiming to accomplish specific objects under the ruse of general laws. A number of others were bills relating to salaries of certain persons, but framed in as general terms as possible.

Nearly one-half of the bills vetoed were local or special bills of various kinds. A number of these made State appropriations for local objects for which there was no State obligation. Several of the bills were vetoed because in conflict with more general plans of legislation or administration. Some were vetoed because they were not well worked out to accomplish the object in view, were vague, or did not afford an adequate scheme for their purpose. Among the reasons given by the governor

[7] Argus, March 25, 1910.

for vetoing different bills were, "of doubtful constitutionality"; "not in the line of good public policy"; "informalities and defects which should be ignored"; "lacking in essential safeguards";"serious entanglements would follow the approval of this bill";"better to wait a few months and have the statute in proper form"; "it is to be regretted that a comprehensive measure has not been provided." [8]

The omnibus veto, which included vetoes on one hundred eighteen bills, contained the following heading: "The following bills are not approved because they are either duplicates or unnecessary, or are defectively drawn, or are embraced in or in conflict with bills already signed, or are unconstitutional, or are for purposes which can be suitably accomplished under general laws, or should be provided for, if at all, by amendments to the general law, or are objectionable and inadvisable by reason of proposed changes." Such being the character of the vetoes, it can scarcely be urged that the second chamber exercises a very efficient check on legislation.

INCREASING POWER OF THE GOVERNOR

To such a degree has the second chamber been an insufficient check that we see not only the large exercise by the governor of the veto power, but there has been a large shifting of the responsibility for legislation to the governor. It has been a common expression of legislators to say, "Let us put it up to the governor." In a debate on a prominent bill, a leading senator on the floor of the senate publicly asked his colleagues to rely upon the mayor of the city of New York and upon the governor to stop the progress of the bill if it should be found upon exami-

[8] Public Papers of Governor Hughes, p. 113 ff.

nation of its provisions that the public interest was not safeguarded. This was tantamount to a request to the legislators to shirk their responsibility and place it upon the executive. In the governor there is a concentrated responsibility. He represents the State, and his actions are open to the public. Two chambers tend to diffuse responsibility, and it is usually difficult to locate any real responsibility there. It has been shown that in the case of appropriation bills there is practically no check by the second house. What check there is is exercised by the governor, and he takes the responsibility for cutting the appropriations.

There seems to have come to be a dependence upon the governor to act as an efficient check rather than upon the second house. In the appropriations particularly there is a tendency of members of both houses to get all the appropriations they can, with neither house interfering with the other's desires, all with the hope that the governor will allow some all around. With respect to other bills, if they are able to pass the scrutiny of the governor they are regarded as proper. The burden of so much responsibility upon the governor has come to be very heavy on account of the large number of bills which he must carefully pass upon within a short time. In 1910 there were nine hundred eleven bills which passed the legislature and reached the governor. Up to May 25th, only two days before adjournment, there were only three hundred sixty-five which had been approved by the governor and only seven had thus far been vetoed. Although the Constitution provides that the governor shall have thirty days after the adjournment of the legislature within which he may veto bills which have not been passed previous to within ten days of adjournment, that left five

hundred and thirty-nine bills which the governor had to decide upon within about a month. The passing upon those bills is a matter of so great importance that Judge Parker says that it would be wise to have them passed upon after argument by a tribunal the equal of the best appellate courts in the country.

Not only is there a dependence upon the governor to check the bills after they have been passed by the legislature, but in many cases there is such dependence upon him to originate bills and direct the action of the legislature. This is illustrated by the message power of the governor and the growing custom for him to lead in the agitation in behalf of certain measures. In the governor's message of 1910, there were twenty-seven subjects on which action was recommended. Measures in harmony with the recommendations were enacted on about seventeen of these. The governor also sent five special messages and twenty-two emergency messages which the Constitution provides the governor may send when it is desired to pass a measure without the elapsing of the three days' interval in which a bill is ordinarily to be upon the desks of the members.

RECALLED BILLS

The governor not only has the powers mentioned, but he is using what is in effect a revisory or amending power over bills while they are in the legislature through the practice of recalling bills. Bills, after having been passed by the legislature and sent to the governor, may be recalled for amendment, or for any other purpose, by a concurrent resolution.[9] The concurrent resolution for

[9] Clerk's Manual, 1912, p. 590.

this purpose in practice is a formality which it is not difficult to utilize and is not very well safeguarded. There have been several discussions of the danger of a scandal in its exercise. A bill may be recalled for various purposes, usually for amendment. In some cases it is recalled by legislators interested for the purpose of making amendments which, after further consideration, have been considered advisable, but in other cases they are recalled at the suggestion of the governor in order that they may be amended to harmonize with the views of the governor. An indication of the practice was given by the majority leader when he acknowledged on the floor, on April 6th, that he and the governor, together with the superintendent of prisons and the chairman of the senate finance committee, had agreed to recall the bill relating to prison appropriations from the governor in order to take out some objectionable items, and that he had forgotten it. The result was the bill was vetoed.

In 1910 there were one hundred thirty bills which were recalled. Of these, fifty-seven were amended and approved by the governor. Twenty-two were recalled, but were not amended and were returned to the governor and became law. Eighteen were recalled but were not amended and were vetoed. Thirteen were amended but vetoed. Twenty were recalled and not returned to the governor.

It is difficult to determine what proportion of the one hundred thirty were recalled at the suggestion of the governor. Some undoubtedly were recalled and amended in order to obviate a veto. In the Albany *Argus* of April 28, 1910, a Democratic paper, it was stated, "Governor Hughes is directing the recall of bills in shoals on any old pretext from the demand that the phraseology of

a section shall not be tautological to a criticism of the general character of a measure. He evidently expects that the bills will be held long enough before returning to put them in the thirty-day list, when he can dodge responsibility and evade specifying why he kills them in an omnibus veto."

While the latter part of the quotation can be attributed to partisan bias, the exercise of a revisionary or amending function by the governor is an important factor. Whatever may be the extent of such a power of the governor, the recalling of one hundred thirty bills is a further reflection on the quality of the check of the second house. When so many bills are allowed to pass both houses, and after they have had the "consideration" of both houses and passed and are out of the hands of the legislature, that there should be need for recall and further revision does not speak well for the efficiency of the check.

THE CHECK OF THE JUDICIARY

In addition to the check of the executive, a further one is exercised by the courts. After a measure has passed both houses of the legislature and been approved by the governor, it may be subjected to a review of the State courts to determine whether it is in conflict with the State Constitution, and also in some cases it may be required to undergo a review by the Federal courts to determine whether it is compatible with the Constitution and laws of the United States. This is a safeguard which does not exist in those countries where the courts do not have the power to declare an act of the legislature unconstitutional, and the absence of it in Great Britain

may account in part for the strong insistence by some English writers on the necessity of a bicameral system.

The fact that it is the tendency throughout the United States to increase the length of the State constitutions and place more limitations on the power of the legislature serves to make the check of the judiciary of increasing importance. More and more the people seem to be afraid to trust the legislature, and they are hedging it in with an increasing number of restrictions. One of the reasons for this checking of the legislature by the people is because the legislature has not sufficiently checked itself. In other words, the division into two houses has not been successful.

It is not often that acts are declared unconstitutional. Of the acts passed in 1910, there was only one which was declared unconstitutional within the period of two years following the adjournment of the legislature. That was the employers' liability law, upon which extraordinary effort had been expended in order to draft a bill which should be constitutional, it having been prepared under the direction of a commission composed not only of senators and assemblymen, but also of experts outside of the legislature.

It is as a potential check rather than as an active one that the check of the judiciary is valuable. When it is recognized that a questionable measure is likely to be declared unconstitutional, that likelihood acts as a deterrent, as little is to be gained if it is almost certain to be declared invalid.

The check of the judiciary is an effective one upon the class of measures to which it is applied. But there are many fields of legislation in which the courts furnish

no adequate check, as much bad legislation is constitutional. Another drawback to the check of the courts is that it is slow in being put into operation. Years may elapse before a case may be brought and a decision rendered.

CHAPTER VI

A CHECK ON BAD LEGISLATION

It is commonly said that the second chamber is a valuable check on bad legislation. It is claimed that it is more difficult to corrupt, deceive, or persuade two bodies than one, and, because it requires the concurrence of two bodies to pass corrupt, vicious, or undesirable measures, the danger of such measures getting through is not so great when there are two houses through which they must pass.

The fact that a bill has to pass through two houses obviously makes it somewhat more difficult to get a measure through than if the legislature contained only one house. If there were three houses, the difficulties would be still more serious. However, the flood of bills which passes both houses seems to indicate that the increased difficulty of passing both houses is not very great. Over four-fifths of the bills that passed one house passed both, less than one-fifth of the bills being checked by the second house.

Mr. Bryce suggests that "a job may have been smuggled through one house, but the money needed to push it through the other may be wanting. Some wild scheme, professing to benefit the farmers, or the cattlemen, or the railroad employees, may, during its passage through the assembly, arouse enough attention from sensible people to enable them to stop it in the senate." [1]

It has been shown that the existence of two chambers

[1] The American Commonwealth, 1910 ed., Vol. I., p. 557.

does not aways mean that there is very much time between the passage of the bill by the two houses in which to arouse public attention. It has also been shown that, of the bills of a suspicious or questionable nature in the session of which a special study was made, few were checked by the second house and that the governor killed more bills of this character than both second houses combined. Nevertheless, the second chamber should be given credit for killing a few bad bills.

The second house would seem to help to prevent bad legislation because there are two bodies through which the bill must pass. Sometimes the interval of time between passage between the two houses will enable public opinion to be aroused, and sometimes the membership of the two houses may be of a sufficiently diverse character to check a bill in the second house, although we shall see that usually both houses are controlled largely by the same influence—the political party.

But the same impediment which the existence of two chambers offers to bad measures applies also to good ones. A good measure opposed by special or predatory interests can be easily defeated under the bicameral system because all that is necessary is for the opponents of the measure to control one house. Obstruction to any measure, whether good or bad, is comparatively easy, but the carrying of a measure is more difficult. Efficiency in government and service to public welfare make it often as imperative to enact good positive legislation as it is to merely prevent the passage of bad laws. In fact, the test of efficiency in legislation is the ability to effect positive enactments. When affirmative legislation is desired, the opponents of such legislation frequently find it easy to concentrate in one house and thus prevent the passage

of the desirable bills. Each house having a negative on the other, the control of one house is all that is necessary to prevent legislation.

Many of the more important measures are those which burden or regulate certain private interests, or restrain or prohibit their acting in the way in which they have been accustomed. In this class of measures are some of those relating to taxation, to the many forms of regulation of corporations, to gambling and liquor laws, and many others. It is obvious that those groups and interests affected will endeavor to prevent the passage of measures obnoxious to them. To enact a law requires the two houses and the executive, but the negative power to prevent the enactment requires only one of these. The proposed legislation may be highly desirable and badly needed. If a direct vote of the people could be had upon it, possibly it would be overwhelmingly supported, but no matter how good, one house can check such legislation. All that the interests hostile to the proposed legislation need to control is one house. The control is exercised in various ways.

An examination of the cases of legislative corruption which have been made public is important to ascertain where it is located, whether chiefly in one house, and, if so, in which one, and the nature of the control which is exercised.

In the legislature of 1910 there was very little downright corruption. The influence of the governor was such that it was recognized that the passage through the legislature of undesirable bills would come to nought, because of the governor's veto, and so, while there were a few suspicious, or questionable, or perhaps semi-corrupt, measures, there were no cases on which a judgment could be made concerning the location of corruption.

LEGISLATIVE INVESTIGATIONS

It is in the various investigations where the evidence which can be accepted as reliable must chiefly be sought. The leading investigations relating to legislative corruption in recent years are those relating to the passage of the anti-racetrack gambling bills, the Allds case, and the Insurance Investigation.

Racetrack Gambling Corruption.—The matter of the corruption relating to the passage of the anti-gambling bills was investigated by a legislative investigating committee which sat in the Fall of 1910.

The bills were before the legislature of 1908. The governor in his message quoted the constitutional prohibition against pool-selling and bookmaking, declared that the existing law was no substantial compliance with the constitutional mandate, and recommended the enactment of legislation which would perform the duty imposed upon the legislature by the Constitution.[2] The effort to get this legislation was bitterly opposed by the gamblers and racetrack interests, and it was testified that about $500,000 was subscribed to prevent the passage of the law. In this case the situation was that the public was demanding the enactment of the law, but private interests were arrayed against the proposed prohibition. The assembly passed the two bills designed to carry out the constitutional mandate, but the racetrack interests centered their effort upon the senate, hoping that, by controlling that body, they could prevent the passage of the bills. In the regular session of the legislature they were successful, the measures being defeated in the senate by a tie vote. There was

[2] Article I., Section 9.

one seat vacant owing to the death of a senator. The governor immediately called a special election for a successor to the deceased senator, and also an extra session of the legislature. In the interim between the sessions the governor conducted a remarkable agitation in favor of the bills, making speeches in the senatorial district where the election was to be held, and elsewhere throughout the State. The bills finally carried twenty-six to twenty-five.

In both sessions strenuous efforts were put forth by the racetrack interests. In the investigation one senator testified that he had been offered $50,000 to vote against the bills, and another trustworthy senator told of an offer of $100,000 which had been made to him, and he mentioned several senators toward whom approaches to bribe had been made.[3]

One senator whom the racetrack men tried hard to win over, both by money and otherwise, was told by a prominent leader of the opposite party that if he would vote against the bill he could name his own opponent at the coming election.

One senator who was favorable to the bill had recently had an operation for appendicitis and returned to Albany on the day when the final vote was taken, facing danger from a relapse. It was later testified that the racing interests had three doctors at the hotel ready to pronounce the senator too ill to go to the senate chamber, but that a minister stuck so closely to him that the scheme did not work.

It was brought out in the investigation that it had been the intention of the racetrack men to furnish $5,000 to the Republican leader of the senatorial district where the

[3] New York Assembly Documents, 1911, Vol. XX., p. 956 ff, 968 and p. 1105 ff.

special election was to be held, he having stated that with that sum he would be able to throw the election so that the incoming senator would vote against the passage of the bill. The plan of furnishing the $5,000 was advised against by a Tammany senator supposed to be friendly to the racetrack people. This senator was later accused of having given such advice because he had not been intrusted with the distribution of a large share of the bribery fund. The failure to control that special election was the reason given by the racetrack people for their defeat, and they placed the blame on the Tammany senator.

There were many other methods used than gross attempts at bribery. One senator openly stated that he had been lured away on the day the vote was taken in the regular session. Another senator, who had announced publicly on the floor his intention to vote for the bills, voted against them after receiving advice from the boss of his county. Another senator's change of attitude was ascribed to a telegram received from two bosses in his district.

In this case of the anti-gambling bills, most of the corruption centered in the upper house, because those opposed to the bill knew that if one house could be controlled that was sufficient to kill the bill. When the effort which is put forth by private interests is for the purpose of preventing the passage of a bill it is presumable that the house which has the smaller number of members to control is the one where the greater pressure is likely to be exerted. The vote of a senator is more important than that of an assemblyman because each senator represents one fifty-first of the vote of his house, while the assemblyman represents the vote of only about one-third of that proportion.

However, it does not follow that the improper influence is always likely to be exerted in the senate. The power of the larger house may be centered in a few men, such as the rules committee, or the control of legislation may be almost completely in the hands of the leaders of the party organization. In the case of the anti-gambling bills, it was testified that when one of the bills was before the assembly committee on rules in the regular session, representatives of the racetrack interests endeavored to have the bill held in committee for a couple of weeks longer than it was.

The Allds Case.—Another investigation was the Allds case, which was before the senate in 1910. Mr. Allds was elected president pro tem. of the senate, but previous to his election he had been strongly opposed by several senators, among them Mr. Conger, whose reasons for opposition subsequently became public. In the legislative session of 1901, nine years previous, when both were members of the assembly, Mr. Allds, who was chairman of a committee having charge of some bills affecting the interests of some bridge companies in which Mr. Conger was an officer, had demanded and accepted a bribe of $1,000 in order to refrain from pressing for passage certain bills pending before his committee which were inimical to the bridge companies. In the trial of Senator Allds it was testified that, in 1901, $6,000 had been paid by the bridge companies to Allds and others for the purpose of killing the bills which had been introduced against the bridge companies. It was claimed that a large share of the $6,000 had gone to the Speaker, who had since died and left a large estate, his name having been upon a bribe envelope said to contain $4,000.

It is noticeable that in this case the money was paid to

members of the assembly and none to the senators. There was more significant testimony to the effect that the bridge companies had continued to pay money in 1902, 1903, 1904, and 1905, but that in those years it was paid, not to the individual members of the legislature, but to the chairman of the Republican State committee. Mr. Conger had paid both individually and for the bridge companies. Mr. Conger testified that he told the State chairman in 1902 that those bills were again introduced and that "we could not submit to blackmail any more, that we were Republicans and had contributed to Republican campaign funds. I asked him to make this an organization matter and call off such strike legislation, and he said he would do what he could." The measures hostile to the bridge companies were not passed.[4]

Instead of individual members or committee chairman exercising control, the party chairman was able to kill any bill. It is worthy of notice that the bridge companies were up-State, country corporations, comparatively small and at first inexperienced in legislative matters. As they became wiser they found the more efficacious method of preventing hostile legislation was to deal with the party leaders.

In this case, at first the corruption was in the lower house, but later it was centralized in the party organization.

Insurance Investigation.—A third investigation which has given publicity to some of the methods employed by special interests in influencing legislation was the Insurance Investigation of 1905. Many and various were the means employed. They included the maintenance of residences at the State capital for the entertainment of legis-

[4] New York Senate Documents, 1910, p. 705 ff.

lators; the obtaining of the influence of leading men in the legislator's district, particularly his political and financial backers; contributions to the campaign funds of both parties, usually more to the dominant party; and various other means. There was not much evidence in this investigation as to the relative pressure exerted upon one house or the other. But the evidence indicated that a large share of the bills with which insurance companies and other corporations have to deal are those bills which they are endeavoring to prevent the passage of rather than those which they are promoting.

SECOND CHAMBER AN OBSTRUCTION

In all cases of obstructing the passage of bills, whether those bills are good or bad, the second chamber is a serviceable agency. The existence of the second house gives an additional chance for the opponents of a bill to kill it. But in accomplishing positive legislation the proponents have the handicap that the opponents of such legislation are required to control only a majority of one house. The usefulness of the second chamber resolves itself down chiefly to the proposition whether the legislature should be so constituted as to enable it to exercise legislative authority through direct positive action without hindrance by interests which need only to exercise a mere negative power in a part of the legislative organ; or, whether it should be so constituted as to make it easy for obstructors of legislation to prevent the passage of bills through their control of a single chamber.

The real test of legislative authority is the affirmative power to enact laws in harmony with the public welfare. When the public will is ascertainable, the legislature

should not be hindered by obstructionists in one house. In some classes of questions which are primarily in the realm of discussion, the details of which may better be worked out by deliberation, the second consideration may be valuable, although in those cases some doubt it, thinking a full consideration in one house is better than hasty consideration in two. But in other classes of questions, usually the more important ones, where private or special interests are actively opposing proposed measures, the second house gives an additional opportunity for obstruction by the interests and becomes more often a preventative of good legislation than a hindrance to bad.

It may be argued that, even though there is corruption in the second house, the same interests which now may accomplish their ends by corrupting only one house, since that is all that is required in order to prevent legislation, would endeavor to corrupt the single body, and presumably with greater ease, if the legislature were composed of a single house. That might be the case unless a possible single chamber were accompanied by provisions allowing a clearer location of responsibility, safeguards for fuller consideration, and provisions for greater publicity at all stages in regard to all action taken.

The obstructors of legislation as a rule do not confine their efforts to one house, although they will concentrate anywhere in order to achieve their ends. The evidence given above indicates that in some cases corruption or improper influence is centered in the senate, in some cases in a committee of one house, in some cases in the rules committee of the assembly, and in some cases in the party organization.

It is manifest that those special interests which are subjected to a continuous opposition have found an effi-

cacious method of thwarting hostile legislation to be an alliance with the party organizations which control the legislature. It is probably the most efficient means of forestalling legislation. When there is an alliance with the party special effort does not need to be centered on one house more than on the other.

The evidences of corruption which have been examined do not indicate as many cases of positive promotion of bad legislation by powerful private interests as there are cases of obstruction of desirable measures. Most of such interests are obviously satisfied with conditions as they are. There are fewer bad bills which they are trying to promote than there are desirable bills which they oppose.

In cases where bad bills are promoted by special interests the theory is that the second house will check them, but in practice comparatively few are thus checked. In 1910 not over four or five bills promoted by strong special interests were defeated in the second house, while more than twice this number of such bills passed both houses but were killed by the governor. In cases of passage, the two houses are in accord, and in many such cases the party is the harmonizing agency. The party organization envelopes both houses, and when powerful interests are engineering measures through the legislature, there is more reason for them to co-operate with the party than when they are merely interested in obstruction.

If the party organization enveloping both houses can exercise such control that it can not only serve the purpose of private interests in obstructing desirable legislation, but also in passing undesirable legislation, the party becomes the central point in the study of the bicameral system.

CHAPTER VII

THE PARTY OUTSIDE THE LEGISLATURE

No study of the bicameral principle would be adequate which did not give large attention to the methods of choice of the members of the two houses. The formal constitutional provisions are of comparatively small moment. The voting qualifications are the same; the senators are chosen from districts about three times as large as the assembly districts, although the size varies considerably; and the senators are chosen for a one year longer term than the assemblymen. The important fact, which is almost superfluous to state, is that the political party controls the choice of the members of the legislature. The party envelops and co-ordinates both houses, and the other departments of government as well. The party nominates the candidates, conducts the campaign, raises the campaign funds, and elects the members. Without party support, it is practically impossible for an individual to be elected to a legislative office. The members of the legislature are party men. They are dependent upon party support for their political life. In the last five years there was no man elected to the legislature who was not nominated by a political party, although five were elected by minority parties.

If the members of the two houses are alike selected and elected by the same party, and are alike dependent upon that party for their election, re-election, or future preferment, their legislative action will necessarily be in-

fluenced by the interests of the party in those matters which concern the party's welfare. When the party, through platform, caucus, or recognized authority, demands action in harmony with its purposes or interests, the members of one house as well as the other are expected to promote the interest of their party. This being the case, the party tends to unify the two chambers.

The purpose of this chapter is to study how fully the party has co-ordinated the vote of the legislative and executive departments and that of the State legislature and the National Congress; to see what variations there are in the vote of the legislature from the vote for State officers and from the vote for Congress; and to see what variations there are in the vote between the two chambers in order to find whether there is any real independent selection outside of party, and how completely the party envelops all departments of government, including the two houses, as one. It is also proposed to see how completely the individual candidate is dependent upon his party for success.

A study is also made of the methods of nomination and whether they are appreciably different in one house from the other.

CORRESPONDENCE OF THE SENATORIAL VOTE AND THE STATE PARTY VOTE

A study was made to see how closely the vote for State senators corresponded to the party vote for secretary of State. The vote for secretary of State in 1908 was chosen as better representing the regular party vote than the vote for governor, owing to the unusual prominence of the winning candidate for governor in that year.

Omitting the four counties which have more than one senatorial district, there were forty-one out of the fifty-seven counties in which there was a variation in the vote for senator from the party vote for secretary of State of less than five per cent. In sixteen there was a variation of five per cent. or more, and in nine of the sixteen it was ten per cent. or more, in two counties running up to thirty per cent. But outside of these two, thirteen per cent. was the highest variation. These sixteen counties were parts of twelve senatorial districts. But there was only one senatorial district which sent to the senate a candidate of a party different from the party which carried the district for secretary of State.

Of the twelve districts in which certain counties fell behind five per cent. or more, only six fell behind that much in the district as a whole, and none more than ten per cent., weakness in one part of the district being offset by strength in another. The size of the senatorial districts thus makes them less responsive to local opinion and influence. Of the six districts which fell the most behind the State party vote, in only one was the candidate defeated. The other five were not only successful in 1908, but three of them were re-elected in the succeeding election, 1910, by increased pluralities, notwithstanding the Democratic landslide.

In thirty counties, or one-half of the counties of the State, there was a variation of less than one hundred fifty votes between the number for secretary of State and that for senator. The variation was only about half as much again as was the variation between the lieutenant governor and the secretary of State, two offices adjoining on the ticket. In the thirty counties which had a variation of less than one hundred fifty between the secretary of State and

senator, the total was 2,203, and the variation between the secretary of State and lieutenant governor in the same counties 1,418, a difference of 785. In half the counties of the State the variation between the vote for the upper house of the legislature and an ordinary State office exceeded the variation between co-ordinate State offices by an average of less than twenty-seven votes to the county.

Thus the senator is most intimately bound up with his party. He stands or falls with his party. His election is dependent upon his party's success in his district. He stands very little chance of being elected unless his party is victorious. As shown above, with only one exception, every candidate for senator was elected or defeated along with the other candidates on the State ticket.

CORRESPONDENCE OF THE ASSEMBLY VOTE AND THE PARTY VOTE

The assembly vote seems to be closer to the regular party vote, as expressed by the vote for secretary of State, than the senatorial vote. Of the forty counties which are coterminous with the assembly districts, there were thirty counties in which the variation in the vote for Republican assemblymen varied less than three per cent. from the Republican vote for secretary of State, and twenty-four of the forty counties varied less than two per cent. The total variation in thirty counties, one-half the counties of the State, was 2,072 votes, while the variation in the same counties between the vote of two adjoining offices on the State ticket, lieutenant governor and secretary of State, was 1,753, a difference of only 319, or an average of less than eleven votes to a county. This indicates that in these counties there is little more variation in the vote between

the party candidate for assemblymen and another candidate on the State ticket than between two candidates for State officers on which it is usually considered that not much discrimination is made. This of itself does not show that the voters exercise little more discrimination in voting for members of assembly than they do for secretary of State, but it does show that the party is able to get about as many votes for the one part of the ticket as for the other. It must be understood that the above applies to one particular election and to the forty single-district counties. A larger area and a long series of years should be studied. But considering the result in three-fourths of the counties included, the uniformity in the party vote is significant.

COMPARISON OF THE ASSEMBLY AND THE SENATE VOTE IN RELATION TO THE PARTY VOTE

That the assembly vote is closer to the party vote than the senatorial vote is shown by the fact that, while there were twelve of the forty counties in which the senatorial vote varied from the vote for secretary of State over five per cent., there were only nine in which the assembly vote varied over five per cent. In seven counties the senatorial vote varied ten per cent. or over, while there was only one county in which the assembly vote varied as much as ten per cent. from the vote for secretary of State. The two highest variations were one of eighteen per cent. and one of nine per cent., and in those two counties assemblymen of the opposite party were elected. These two counties were the only ones of the forty in which the assemblymen were elected by the opposite party to the one which carried the county for secretary of State. And one of

these counties belonged to a senatorial district which was the single senatorial district of the State which elected a senator of the party opposite to the one which carried it for secretary of State. In this case also the assembly vote of the county was nearer the party vote for secretary of State, it varying nine per cent. and the senatorial vote varying thirteen per cent. It will be observed in this case that the assemblyman was elected by the same party as the senator, the success of one helping the other.

Of the nine counties which varied five per cent. or more on assemblymen, four of the nine also varied on senator. Thus the vote for senator and assemblyman ran closer to each other than either did to the vote for secretary of State. In each of the four counties, however, the vote of the senator varied more than the vote for assembly, the senator helping carry the assemblyman away from the regular party vote. In these cases, both houses of the legislature ran parallel. Subtracting these four counties, there are left only five in which there was made a discrimination against the assemblyman and not the senator, and, in two of these five, there was a still wider variation on the congressman. There were eight counties which varied on the senator that did not on the assemblyman.

CORRESPONDENCE OF THE SENATORIAL VOTE AND THE ASSEMBLY VOTE TO EACH OTHER

In the election of 1908, of the forty single-district counties, in nineteen the difference between the assembly vote and the senatorial vote was less than two per cent. of the party vote. In twenty-two it was less than three per cent., and twenty-eight less than five per cent. Of the twelve over five per cent., eight varied in the same direc-

tion from the vote for secretary of State for both senator and assemblyman. Of these eight, in five the large variance was due to an unusual vote for senator, and in three because a candidate for assemblyman ran ahead of his ticket. In four cases the senator and assemblyman varied in opposite directions, one running ahead of the ticket and the other behind. In three of these cases, a senator was the chief variant and in one an assemblyman. So there were only four cases in which there was much difference between the vote for senator and assemblyman in which their vote did not vary the same way from the State party vote. Three of these counties voted for the same party for assemblyman as for senator.

COMPARISON OF SENATORIAL AND CONGRESSIONAL VOTE

A comparison has also been made between the vote for State senator and congressman. The result shows that the senator is bound up not only with the other candidates of his party for the state offices, but for national office as well. In fact, in the campaign, most of the emphasis is put upon national issues—the parties are national parties. During the session of the legislature of 1910, right in the midst of the legislative happenings, fully four-fifths of the editorials on political subjects of the Albany *Daily Argus,* the leading Democratic paper at the capital, were devoted to national questions rather than State questions.

Of the fifty-nine counties outside of New York and Kings, in only seventeen was there a variation of five per cent. or more in the vote for senator from the vote for congressman. In nine of these it was ten per cent. or more. Thirteen of the seventeen counties were the same counties included in the number sixteen mentioned above

in which the senatorial vote varied five per cent. or more from that for secretary of State. In these thirteen counties, the change in the vote for senator accounts chiefly for the difference between the vote for senator and congressman. In the other three of the sixteen counties, the congressional vote ran almost parallel with the senatorial vote in the deviation from the party vote. But there were four other counties, making the seventeen, in which the change in the vote for congressman was the determining factor. In two of these, the Republican vote for congress was higher than the vote for secretary of State, and in two others, in the same congressional and senatorial district, it was unusually lower.

In twenty-seven counties there was a variation of less than one hundred fifty votes, and, in thirty-five, less than two hundred votes between the vote for senator and congressman. In twenty-eight counties the difference was less than two per cent., and in thirty-one less than three per cent., between the Republican vote for congressman and senator. There was only one county, Cortland, which failed to vote for the same party for both congressman and senator. It voted Republican for congressman and Democratic for senator. In that county there was the greatest spread between the vote for secretary of State and senator, thirty per cent., and also between congressman and senator, thirty-three per cent. But both the senatorial and congressional districts in which Cortland is situated were carried by the Republicans. So here the local variations from the party were of no effect in altering the representation in the legislature. The customary party won as usual.

Although the variations between State senator and congressman were larger than between State senator and

secretary of State and larger than between senator and assembyman, yet every senatorial district up State voted for the same party for congress that it did for State senator and every county but one voted for the same party for congress and State senator.

ELECTION OF 1910

The campaign of 1910, although not a presidential year like 1908, was fought largely on national issues. The election was noted for the turn from the Republican to the Democratic party. An analysis of the vote shows that in 1910 the senatorial vote kept closer to the congressional vote than in 1908. Of the fifty-nine counties outside of New York and Kings, in thirty-one the Republican candidate for senator got more votes than the candidate for congress, and in twenty-eight counties the candidate for congress got more than the Republican candidate for senator. In only thirteen counties did the senatorial vote vary five per cent. or more from that of the congressman, and in only five did the variation amount to ten per cent., and in only one did it go above eleven per cent.

In twenty-five counties the difference between the two candidates in the Republican party was less than one hundred fifty votes, and in thirty-seven counties less than two hundred votes. In twenty-one counties the variation between the senatorial and congressional vote was less than two per cent., and in thirty-three, less than three per cent.

Five of the counties voted for one party for congressman and for the other party for senator. In three of these counties the senatorial plurality was in favor of the same party as the plurality for governor, but the plurality for congressman was for the opposite party from governor

and senator, thus indicating that the congressional vote was the deciding factor in making the difference in party between the national and State offices, and that it was in the vote for congressman in which an attempt at discrimination was made.

There were two counties which voted for a different party for senator than for governor and congressman, thus indicating a selection for senator outside of the majority party. But in both of these cases the counties belonged to senatorial districts which elected senators in harmony with the party in the majority in the district as expressed by the vote for governor. Also the senatorial districts of which these two counties are members voted for the same party for Congress as they did for State senator.

So the size of the senatorial districts in which these two counties were situated prevented these counties from changing the party of the district from that which carried it for both governor and Congress.

It must be clearly understood that every senatorial district voted for the same party for senator that it voted for for governor.

Notwithstanding the turnover from the Republican to the Democratic party in the election of 1910, and notwithstanding that fourteen out of fifty-one districts changed parties, in every senatorial district, the successful party in the vote for governor in the district was also the successful party in the senatorial vote. Parties change and the senators change with the parties, but in no district was a senator elected who was a member of the party in the minority for State officers in the district.

Considering the large number of districts in which there was a change, the New York election of 1910 indicates that there are a considerable number of voters who

swing from one party to the other, but that, to a large extent, the change is to the party as a whole and not to individual candidates in the other party. The movement was from party to party rather than from one individual candidate to another individual candidate. The effect of this is to make the interests of the individual candidate more and more closely bound up with his party. The individual's success is bound up with his party success. Without party success there can be no office for him. Consequently, the interest of the party must constantly be put foremost, and the views of the candidate have to be made subsidiary to party success.

Of course, there is some independent voting. In two counties mentioned above it was sufficient to change the plurality in those counties, but in neither case was it sufficient to affect the result in the senatorial district. It is difficult to measure the amount of the independent voting, as some votes that come are balanced by others that leave. It is clear that independent voting applied to individuals has not been successful. While such independent voting, as applied to individual candidates for senator, was not able to accomplish a single variation from the party which carried the district for State offices, the defection from the Republican party as a whole was effective in fourteen senatorial districts. There was one, and only one, senatorial district which voted for one party for congressman and the other party for senator and governor. But the plurality was small, and it was the congressman rather than the senator who drew a special vote, as the senator and governor were of the same party.

THE INCLUSIVENESS OF PARTY

So comparing the vote of each house of the legislature with the vote for regular State ticket, with the vote

for each other and with the vote for congressman the party gets votes for all almost uniformly. Professor Goodnow has pointed out [1] that one of the reasons for the great strength of parties is to produce harmony between the different departments of government and between the national, State, and local authorities. The party provides the means of circumventing the troublesome checks and balances which were established in accordance with the political philosophy of Montesquieu.

But it has been recognized that government can not be too much hindered by obstacles and checks. Government is a going concern. To be efficient it must be able to do certain things and not merely be prevented from doing certain other things. To be able to run smoothly and efficiently there must be co-operation and harmony between the different departments and authorities. President Woodrow Wilson says,[2] "A co-ordination of wills, united movement under a common leadership, is of the very essence of every efficient form of government."

Several leading writers [3] in political science have developed the theory that one of the leading reasons for party government is because the party, a "distinct authority outside the formal government," has developed to provide the needed co-operation and harmony in our complex governmental machinery which our formal government did not provide owing to the checks and balances. The conspicuous checks and balances are the separation of powers into legislative, executive, and judicial, the division of authority between national and State gov-

[1] Politics and Administration, Chapters II and VI.

[2] Constitutional Government, p. 135.

[3] Goodnow, supra, Ford, The Rise and Growth of American Politics, Chapter 7. Wilson, Constitutional Government Chap. VIII.

ernments and the division of the legislature into two houses.

In order for a party to achieve certain principles in government there must be the passage of bills through both houses—one is just as essential to success as the other, both are necessary. On matters which are not party questions, or on which there is not sufficient difference of opinion and interest to affect the party vote the party does not need to exert itself. But when there are real issues to be carried to success, or when there are important party ends to be achieved, then control of both houses is essential.

There is needed not only the two houses of the legislature to enact the law, but there is also needed the co-operation of the executive, at least in order that the measure may not be vetoed, and in many cases his active support is desirable. On some matters it is very essential to have the executive department in harmony to administer the law effectively after it is enacted. In the matter of appointments there is needed the co-operation of the executive and the upper house.

If there are issues, which, to carry through to success, will require the action of both the national and State governments, issues the settlement of which falls partly within the Federal and partly within the State sphere, the party is justified in aiming to control both the State and the Nation. But besides such issues the conspicuous factor which requires the party to be a co-ordinating agency between the national and the State governments is the election of a United States senator.

The party machine is stimulated to work uniformly for all candidates, not only to have a legislature in harmony with the executive, but also to make possible the

election of the party choice for United States senator. Here the State party is subordinated to the interests of the national party. The success of the party in choosing its candidate for United States senator is conditioned upon its success in electing a party legislature. In two elections out of three in which State senators are elected, the members chosen are to have a voice in the choosing of a United States senator. The parties being national parties, and the United States senator being such an important office, both from the standpoint of party issues, party machine, and party patronage, it is evident that in two-thirds of the elections for State senators the party will make strenuous efforts to subordinate all personal, local, or State matters to the achievement of its ends in national matters.

Whether to enact great principles into law or to control the pork barrel, whether to elect a United States senator or to provide more offices and higher salaries for the faithful in some obscure locality, the party needs to control both houses and the different departments of government, and it aims to poll a plurality of votes for all, except in some rare cases where it wants to enforce discipline. No party manager conducts his campaign on the legislature alone. He is interested in carrying the national, State, and local ticket and the candidates for all offices, knowing that strength in one part of the ticket helps the rest. It is thus the party's function to control all departments of government if possible.

EXAMPLE OF HOUSES OF OPPOSITE PARTIES

When a session occurs, as in 1912, where by a change in the party one year and a return the following year the holdover senate is left controlled by one party and the

assembly by the other, we have a situation in which neither party accomplishes much. The session of the legislature of 1912 was not surpassed in brevity by any session in the history of the State. Almost all the important measures recommended by the governor in his annual message failed of passage. Little constructive legislation was enacted, the important measures dealing chiefly with matters which needed immediate action. Only 369 measures became law, as compared with an average for the six preceding years of 699. The newspapers characterized it a "do-little" legislature. No thoroughly bad laws so far as known were enacted, but some good bills failed. Each party existed in the hope of defeating the other at the next election and thus control both houses at the next session.

There was no pretence that one house was acting as a disinterested and sincere check on the other, no thought of one house being more capable than the other, no suspicion of one chamber being jealous of its own rights as a chamber against the other chamber. There was no idea of a conflict between chambers, but it was a conflict between parties. It was the fact that one house was controlled by one party and the other by the other party which explained why little was done, and it would be ludicrous to attribute it to the inherent opposition of two formal chambers, or to any other cause associated with the bicameral theory which failed to recognize the fact of diversity of parties.

THE LEGISLATOR'S DEPENDENCE UPON THE PARTY

The legislator is not only nominated by the party, and his election usually determined by whether his party succeeds or not, but ordinarily it is much more important

for him to stand in with his party than it is for him to give much concern to the views of the people as a whole, except in the degree that his acts affect the party vote. An individual legislator's defeat is ordinarily much more likely to be brought about within his party than without. Of the thirty-two members of the senate of 1908 who failed to be returned to the succeeding session, twenty-nine failed because they did not receive a renomination and only three failed because they were defeated by the opposite party. In two of the three districts where the senator was defeated by the opposite party, the senatorial vote corresponded with the party vote for secretary of State.

In 1908, twenty-nine members of the senate were changed by the party senatorial convention and only three because of defeat at the polls by the opposite party. It is natural that the legislator should give wholesome respect to the power that can make and unmake him. It may be said that some did not desire renomination, but whether they did or not, it is enough to know that the personnel of the legislature was determined in most districts by the party rather than on the November election day.

In 1910 the situation was somewhat different as an unusually large number of districts changed parties. But in that year, out of twenty-six members of the previous legislature who did not return, twelve were not returned because of failure to get the nomination and fourteen were defeated by the opposite party.

EFFECT OF CONTINUOUS UNIFORMITY IN THE DISTRICTS

The party wields a large influence because a large number of districts vote continuously for the same party. In these a nomination is equivalent to an election. In the

five elections for assembly since the last reapportionment, during the time the districts are bounded as they now are, there were seventy-five of the one hundred fifty assembly districts which voted for the same party for assemblyman each year for the five years. That is, exactly one-half of the assembly districts voted continuously for the same party. Forty-seven were for the Republican party and twenty-eight for the Democratic. Of the other districts there were forty-eight which voted for the same party for four elections out of the five. This makes one hundred twenty-three in which ordinarily a nomination is equivalent to an election, and only twenty-seven districts which are uncertain. The number of counties voting once contrary to their customary vote was nine in 1907, but five of these were due to fusion between the Independence League and the Republicans; three in 1908; nine in 1909; twenty-one in 1910, the year of the large party change; and six in 1911.

If we consider the party for which the district voted in four elections out of five as the customary party, we find that in 1907 one hundred fourteen districts voted for their customary party; in 1908, one hundred twenty; in 1909, one hundred fourteen; in 1910, one hundred two; and in 1911, one hundred seventeen. In other words, from two-thirds to four-fifths of the districts can be depended upon to vote for the same party each year. Besides, it makes little difference who is nominated, for, as we have already seen, the legislative vote does not vary far from the vote for the other candidates. Thus the party has a double strength and a double control over the legislators because the legislative vote corresponds closely with the party vote, and because the party supremacy in the great majority of districts is relatively constant.

When the majority of districts vote each year for the same party, such probability of change in control of the legislature as there may be, seems to depend upon the ability to control the balance of power in a comparatively few legislative districts.

But many districts are so overwhelmingly for one party that it is very difficult to transfer the control to the opposite party. In 1910 there were thirteen senatorial districts in which the majority party plurality was reduced three thousand or more votes, the average total vote being about 29,000, but the defection in these districts was not sufficient to cause defeat. In five districts, the decrease in plurality was equivalent to over fifteen per cent. of the total vote for both parties in the previous election, and in seven it was equivalent to over thirty per cent. of the total vote in 1910, yet the same party won. Notwithstanding the large reduction in the vote of the majority party, the different candidates—congressional, executive, and legislative—kept bunched close together.

STRENGTH OF PARTY ORGANIZATION

No discussion of the relatively constant vote of the parties within the districts and of the closely corresponding vote of all candidates on the ticket should fail to place large emphasis on the party organization as the chief means in accomplishing this. It is the party which conducts the campaigns. It aims to secure all the votes it can for all the candidates, and at every election.

The candidates for the legislature are not individuals, each conducting a separate campaign, but they become merged in the party ticket, and the party conducts the campaign for all. Of course, individual candidates

take part, but the burden of the campaign is borne by the party organization. It raises the funds, appeals to the voters, adapts its tactics to the many varied situations, gets out the voters, and supervises the count. It makes little difference from what source it gets the votes, whether from the opposite party, the first voters, the stay-at-homes, the purchasable vote, or from any other source, the great object is to get them. Upon the efficiency of the party organization the result is largely determined. The consequences of merely not getting out a full vote are illustrated by the result in 1910. While the Democratic vote fell off seven per cent. from the presidential year, the Republican vote fell off twenty-one per cent., which was enough to change the control of the State. Of the fifty-one senatorial districts, there were only fourteen in which the Democrats made actual gains over 1908. Eleven of the fourteen districts were in New York City or adjacent, where the Democratic party is noted for its efficient organization.

The party is the syndicated agency for the conduct of the campaign. The party organization is expert. The candidate may or may not be. Upon the result of the campaign conducted by the party, then, rather than upon the individual candidate is determined whether the individual shall be a member of the legislature, and this applies to prospective members of both houses alike. With candidates of both houses dependent upon party for both nomination and election, they become equally obligated to promote its interests.

So, outside the legislature, the party has a triple bond on both houses alike. In the first place, it controls nominations; if one is not nominated by his party there is practically no chance of election. In the second place,

most of the districts are mortgaged in advance to one party or the other. In the third place, whether a candidate is elected depends almost entirely upon whether his party carries the district—upon the efficiency of the party organization rather than upon the individual candidate.

Combined with this triple control of the party outside the legislature, if we include the party control within the legislature, through the means discussed in the succeeding chapter, we have a government by party quadruple plated and copper riveted.

SOME EFFECTS OF PARTY STRENGTH

The party being such an overwhelming factor, it becomes increasingly difficult to reward or punish the individual legislator otherwise than within the party, and instead of the people being able to hold him responsible, the responsibility becomes almost exclusively a party responsibility. His action, of course, affects the party as well as the party his, and it is to the mutual interest of the party and the legislator that he do nothing which will drive votes away from the party. If he does act out of harmony with the party, however, the party has the advantage in that it can refuse him a renomination. But if he acts for the interests of the party he can be renominated and probably re-elected, provided his record is not too grossly against the public interest.

Many efforts have been made to reward or punish individual members, but without very flattering success. There are several organizations, such as the Citizens' Union, the Legislative Voters' Association, the Civic League, and the Anti-Saloon League, which each year send out reports showing the vote of each member on bills

in which they are interested, and make recommendations for support or opposition. But, outside of cases where a legislator's action has been so exceptionally undesirable as to make the party leaders fearful for the success of the party, the number of cases where changes have been made has been very few. The Citizens' Union said that in 1909, in eight instances in which the retirement of an assemblyman of one party was unqualifiedly recommended by the Union, an assemblyman of another party was substituted by the voters in November. That was the year, as shown above, in which there were nine districts which voted contrary to their customary party, and six of these were in New York City. There were also seven other districts in Greater New York which voted for an opposite party in 1909 to what they did in 1908. Eight of the thirteen changes were recommended by the Union. But no other year in the last five has equaled 1909 for voting outside of party except 1910, when, as has been shown, the change was from the Republican party as a whole to the Democratic party as a whole.

The party organization also tends to render ineffective an attempt to punish the party because of its action with regard to any specific question or measure. It is difficult to get a decision of the voters with respect to any specific measure. At the election there is presented for their judgment the party record taken together as a whole. Its record is a complex of many things not only in the legislature, but also in the executive department, and in the national, State, and local governments. A voter may not like some things that his legislator has done, but his attention will be called to other performances or qualities that are excellent. He will be told that the interests of his party are at stake in this election, and that to vote for

the other party candidate is merely to vote for another machine. Innumerable are the influences that the party organization can wield. In the case where there is a considerable group of men interested in some important measure who threaten to bolt, they are to be placated, if at all possible; but if they do make a defection, if the party managers can find another group of voters to furnish an accession to the ranks, the defection will not cause party defeat. It is a leading function of the party organization to be prepared to meet all such contingencies and to maintain a majority.

There seems to be a growing appreciation that the voter has very little choice between the two machines, and when the majority party is very strong, as in most of the districts, the individual voter has almost no choice. Governor Wilson of New Jersey, in his inaugural address, 1910, said: "There is widespread dissatisfaction with what our legislatures do, and still more serious dissatisfaction with what they do not do. Some persons have said that representative government has proved too indirect and clumsy an instrument, and has broken down as a means of popular control. Others, looking a little deeper, have said that it was not representative government that had broken down, but the effort to get it. They have pointed out that, with our present methods of machine nomination and our present methods of elections, which were nothing more than a choice between one set of machine nominees and another, we did not get representative government at all—at least not government representative of the people, but government representative of political managers who served their own interests and the interests of those with whom they found it profitable to establish partnerships."

METHODS OF NOMINATION

It is beyond the scope of this dissertation to go far into the subject of nominations otherwise than in what respect the nominations for the two houses may tend to be slightly different. It may be observed that the more power the bosses or the machine have over nominations, the more do they constitute the efficient part of the party, and the more do they compose that efficient constituency upon which the legislator must depend for renomination. Sufficient to say concerning the method of nominations is that, whether nominated by the convention system or by direct primaries, the legislator is still bound up with his party, both outside and inside the legislature. This applies to both houses alike. Few advocates of direct primaries claim that they would obviate the necessity of party.

But there are one or two phases of nominations which have a bearing on the bicameral principle—one is the effect of the nominations being in different sized districts for senators and assemblymen, at different times, and by different delegates; and another subject of importance is the central control of nominations, whether it is greater in the case of one house than in the other.

The assembly district nominations are made each year, and in the odd year there are not many officers to be nominated and attention of political workers can be directed more exclusively to the assembly office. But the same is the case in the election in the odd year, and it has been shown that there is not a great deal more variation from the customary party in that year than the year when other State and national officers are chosen, and there is

little evidence to indicate that nominations in the odd year are much different from what they are in the even year. It is the same party organization each time.

A distinction of more importance is that the assembly nomination is more closely associated with other party functions than the senatorial. In forty counties, the assembly district being coterminous with the county, there is a close relation between the selection of the candidates for the assembly and those for the county offices. There are also a number of county bosses who control the politics of their county. In the counties which have more than one assembly district, there is a similar relation, while in the largest counties, New York and Kings, the assembly district is a unit in the organization of the county committee.

The assembly district elects the assembly district leader, and it is the leader who makes the slate which is voted upon at the primary. He directs all the party activities of his district and acts as a lieutenant of the county boss. If the boss gives orders, he is expected to be obeyed, so that, whether the boss actually chooses or not, it is almost impossible to secure a nomination without the approval of the boss.

So, whether an assemblyman comes from a county of one district, or of two or more districts, or from a large city with many districts, he is closely associated with a local, permanent, and very active political organization. Because of the large amount of work which these organizations have to perform, they are active continuously and the party managers have to become experts. Ordinarily party managers can easily control the choice of delegates to the conventions or determine the designations; and naturally, in making a selection of a legislator, they will choose a candidate who is like-minded with themselves,

at least one who will work harmoniously with the party. They abhor friction within the party ranks, and they usually select some man who by years of affiliation with the party has proven his loyalty and adaptability.

In the selection of senator, the situation is slightly different, although it is difficult to determine what appreciable effect the difference has. The senatorial district is not the basis for the nomination of any other candidates. In the Democratic party, until recently it has been the basis of the membership of the State committee, the latter having been composed of one member from each senatorial district. But the senator was chosen by a senatorial convention and the State committeeman by the delegates from the district to the State convention. In the Republican party there has been one member from each congressional district. Under the law of 1911, in all parties the State committee is composed of one member from each assembly district.

But it is only in part of the State that the senator may not be so involved with the other candidates. There are nine counties which contain within their boundaries one or more senatorial districts and thirty of the fifty-one senatorial districts are included in these counties. In 1910 in all but one of these counties there was a recognized boss of the successful party. These counties include eighty-five assembly districts, so in these counties, comprising over half the members of each house, control over the nomination of members of one house is about the same as it is in the other. Members of both houses are under the same local party organization. In the districts containing more than one county, the convention had the single function of selecting the senatorial candidate.

But there are frequently understandings between the counties. The senatorial district being almost as large as a congressional district, sometimes an arrangement is made by which one county gets the senator and the other a congressman. There are a few senators of large influence in their districts who might be characterized as party leaders. In 1910 there were five senators of the districts containing but one county who were serving their third term or longer. But not more than one or two, if any, could be called bosses.

CENTRAL CONTROL OF NOMINATIONS

There is considerable evidence that senators are subject to central control, but whether they are more so than assemblymen is difficult to determine. There is no question but that the State party managers do take the initiative in promoting the candidacy of certain men and endeavor to circumvent others. To suppose that the choice of representatives is entirely a matter of the local district in this age of combination and large-scale organization is to assume that politics is not up to date.

During the period of the nomination of the members of the legislature of 1910, there was probably less control by a State machine than at any other period for some years. There were several reasons for this. One was that the former conspicuous State boss had relinquished his hold and his organization was largely broken. Some of the methods of bosses had been exposed, and greatly discredited, by the insurance investigation. There were a number of local bosses in the Republican party, but none had yet achieved the pre-eminence sufficient to be called a State boss such as had existed before and has since

developed. The interregnum without a recognized State boss, however, seems to have been of brief duration. The governor himself was a strong leader, but did not use the methods commonly attributed to bossism, although in some instances he spoke openly for or against the nomination of certain candidates. There were a number of recognized local bosses—at least twelve or fifteen counties having a man to whom was commonly ascribed that title. These counties included most of those which contain more than one assembly district. The local bosses worked together, particularly in matters which affected them mutually.

In addition to the central control by the State party managers, there is the activity of the so-called predatory interests which have certain ends to achieve. More often, however, instead of different interests going into a number of districts and working there, they syndicate their forces by contributing in a lump sum to the State party machine. The insurance investigation showed that several life insurance companies made regular contributions to both parties, a larger amount to the stronger party.

It is not claimed that there have been systematic efforts to control legislative nominations wholesale in an illegitimate way. But there have been instances when large financial interests were at stake, and there was a balance of power in the senate which might be controlled, when money has been used in nominations, as the testimony in the race-track gambling investigation indicated. In some States it is well known that the liquor interests have picked the senators over the State.

Another central influence on nominations is that of a candidate for United States senator. Here there is probably little difference between a senator and an assembly-

man, as their votes are of equal value. The newspapers claimed that in the election of 1910 a number of legislative candidates had been picked and campaign funds furnished by one of the candidates for United States senator.

In conclusion, in comparing the different spheres of nomination it must be acknowledged that little definite data is available, and that there is not enough dissimilarity between the choosing of the members of the two houses to make much appreciable difference; but there is a discernible tendency toward a more central control of the upper house.

There is one indirect form of control by the State party over nominations which is exercised by the party organized in the legislature: If an individual legislator does not work in harmony with the State machine, he is not likely to get his measures through or appropriations for his district. As a consequence of his not getting results, the State machine has little difficulty in suggesting to the politicians and the newspapers of the district that they make mention of the fact that the legislator is not as efficient as he should be, and that it would be to the district's interest to have a better man. But to endeavor to follow the mazes of politics and to enumerate the various and common methods of the control of State politics would be to go far afield.

CHAPTER VIII

THE PARTY INSIDE THE LEGISLATURE

The power which the party exerts in choosing the legislature has been discussed. There remains the necessity of making a study of the exercise of party power in the control of the members in respect to their action upon the measures before the legislature. If the party enforces its will upon its adherents in both houses alike, by the degree which it does so do the two houses tend to be unified and the check of the bicameral system tends to become of diminishing value.

Some writers have attempted to belittle the influence of party in the legislature because of the fact that party divisions are made upon only a very small proportion of the bills. In fact, a very large per cent. of the measures which pass have almost no opposition. For example, of the two hundred seventy-five bills which were voted on in the Senate in the last week of the 1910 session, only forty-two had over three votes against them and two hundred fifty-six passed. On only fifteen were the votes even moderately close, there being only that number where the affirmative and negative were within seven votes of each other. Reasons for the small amount of opposition were that the great majority of the measures were of small importance, many being of a local character; the log-rolling proclivities of legislators, many being willing to assist their colleagues in return for reciprocal favors; and the system of rapid roll calls, which results

in diminishing the amount of recorded opposition, a member being required to rise and conspicuously announce his opposition in order to be recorded in the negative. Few of the measures are important enough to be party measures, and few are the issues upon which there is a difference between the two parties in a State—most of the slight differences that do exist being along national rather than State lines. But, nevertheless, the party does exert a pre-eminent power within the legislature, and it is exerted chiefly at stages earlier than that of the final vote. The party power is applied through the organization of the legislature, through the presiding officer, the appointment of committees, the floor leaders, the rules committee, through occasional caucuses on the more important matters, and through the pressure of the party organization in various other ways.

THE PARTY ORGANIZES THE LEGISLATURE

In the organization of the legislature at the beginning of a session, a caucus of each party is held, at which there are chosen the candidates not only for the presiding officer, but for the minor offices as well. In 1910, in the caucus of the majority party in the assembly, the prearranged slate went through without opposition, except by a few assemblymen to the candidate for clerk. In connection with the opposition to the re-election of the clerk there was an interesting incident which indicates the power of the chairman of the State party committee to dictate the action of the legislators. Some of the assemblymen had collected evidence to show that the candidate had abused his power when clerk, during the previous session, and made charges against him. Such pub-

licity was created that there was considerable opposition to his re-election. Certain prominent constituents urged the assemblyman representing the district in which Columbia University is located to oppose the clerk's candidacy. The assemblyman, a man of more than average ability and independence, replied that it would be idle for him to oppose the clerk's candidacy if the party organization of the State put him forward as its candidate. He informed his constituents that the course for them to follow would be to present the charges to the chairman of the State committee. He said that he could not defeat the candidate, neither were the opposing assemblymen able to do it by making appeals to the individual assemblymen. His statement was considered a frank recognition that it was a function of the State committee to determine whom the assembly should elect as its clerk. It also contrasted the impotency of individual members with the authority of the State chairman.

In 1910 the speaker of the previous session was re-elected. But when the decision of the State chairman is accepted as to who shall be clerk, it is clear that he is not quiescent when the more important office of speaker is filled. In addition, the minor offices were distributed as a part of the party patronage among the leading politicians. An Albany Democratic paper, after relating that two assemblymen had withdrawn from the caucus during the brief period for the secretary to cast one unanimous ballot for clerk, said that they all "cheerfully voted for Artemus Ward Jr.'s party worker for principal doorkeeper; for William J. Barnes Jr.'s Eighteenth Ward saloon-keeper for first assistant doorkeeper; for Boss Aldridge's ex-newspaper reporter for sergeant-at-arms; for the unspeakable Tim Woodruff's candidate for stenog-

rapher; and Jim Parker's country town politician for second assistant doorkeeper."

The minority party caucus nominated a candidate for speaker, which nomination carried with it the minority leadership and a place on the ways and means and the rules committees.

In the senate the majority party caucus nominated a president pro tem. This office carries with it the majority leadership. The lieutenant governor is expected to consult with the majority leader in making committee assignments. His power is large, combining some of the powers of the speaker of the assembly and the powers of the majority floor leader.

THE PRESIDING OFFICERS

The presiding officers of each house are prime agencies of party control. There has been much discussion of the power of the speaker, of his power of recognition, his authority to appoint committees, his control by means of his position on the committee on rules, his control over the order of business, and his power in many cases to determine legislation. The speaker's power has developed from the fact that he is the representative of the party. His election is one of the pre-eminent expressions of party will. His responsibility is not a personal one merely, but a party responsibility. He is limited by the interests of his party. If he ceases to be the servant of the party, much of his power will tend to become nugatory. It is as the concentrated representative of the party that he holds his power.

The speaker appoints the committees. In performing this function he wields a large power, but he is expected

to so make his appointments that the interests of his party will be promoted. Not only are all committees constituted with the speaker's party having a majority, but when a committee is destined to have before it matters which vitally concern the party welfare the personnel of the committee is adjusted so as to forward the party ends. For example, in the legislature of 1909 there was appointed a joint committee to investigate the workings of direct primaries in the various States where they had been tried, which committee reported in 1910. Of the members of both houses appointed on this committee, all but one were those whose entire attitude had been in opposition to direct primaries. It is to be observed that the leaders of both houses co-operated in shaping the committee so as to promote what they conceived to be the party ends.

It is generally recognized that members are appointed on the important committees with reference to what their action will be on certain measures which will come before them. When it is remembered that on over nine-tenths of the bills the action of the committee becomes the action of the house, the determination of the membership of committees becomes a most important function. Not only are the members of the majority party appointed to the respective committees by the speaker acting as the party representative, but, by custom, the speaker allows the leaders of the minority party to suggest the distribution of the minority members among the various committees. The following from an Albany Democratic paper with reference to the designation of Democratic members on the committees is suggestive: "Wadsworth (the speaker) waits the coming of Grady and Frisbie to ascertain where they have agreed to have the Democratic mem-

bers placed. Whatever the minority leaders say goes with the speaker unless there is good reason to deny their request, and this seldom happens." [1] It should be observed that Grady was the minority leader of the Senate and Frisbie the minority leader of the Assembly, having been the candidate for speaker. The minority leader of the senate was having a leading part in determining the committee appointments of the members of his party in the assembly. However, the influence he exercised was probably under the direction of the authorities higher up in the party.

In selecting the personnel of those members of the committees of his own party, the presiding officer has to take into consideration the requests of party bosses or workers both within and without the legislature. It was current in the newspapers in January, 1910, that certain local bosses were asking that their representatives in the legislature be given certain committee assignments and that some bosses demanded certain appointments and got them.

In the senate the position of the presiding officer is somewhat different, but the rule of the party is just as effective. The presiding officer is the lieutenant governor, who is the choice of the State convention of the party rather than of the members of the legislature, but it is noticeable that there are many cases where, although the head of the ticket may be of the reform element, the nomination for the second place goes to the machine faction of the party. When this is the case, it is easy for there to be a close co-operation between the lieutenant governor and the party organization in the senate. A considerable part of the power which in the assembly is

[1] Argus, Jan. 11, 1910.

wielded by the speaker, in the senate is vested in the president pro tem. He is elected by the party caucus at the beginning of the session and becomes the majority floor leader. The lieutenant governor is expected to consult him in making committee assignments—in fact, it has been the custom in the New York senate for the majority leader to have a large share in the appointment of committees.

The majority leader is a member of the senate committee on rules, his power thus differing from the speaker's chiefly in that, not being the presiding officer, except in the absence of the lieutenant governor, he does not have the recognition power. But even in respect to parliamentary procedure, his position as floor leader gives him wide influence and, in agreement with the presiding officer, he can direct the action of the body. The writer, when present in the senate gallery during a parliamentary tangle, has observed the amusing spectacle of the majority floor leader signaling to the lieutenant governor what to do in the exigency, his methods of communicating reminding one of the signals from the catcher to the pitcher in a baseball game. One illustration of the power of the senate majority leader is the fact that in the session of 1912 practically every bill he introduced was immediately advanced to third reading by unanimous consent, omitting the committee and general orders stages.

THE FLOOR LEADERS

In both houses, each party has its floor leader elected by the party caucus, who, upon certain occasions, can indicate in what manner it is to the interest of the individual legislator to act. In the senate, the majority floor

leader is the president pro tem, and in the assembly he is a tested party man who co-operates closely with the speaker, and in both houses they are on the committee on rules. In some respects they act as a whip to bring members into line. The newspapers gave an incident which occurred at the time of the passage of the Levy election law in 1911. This was a measure which vitally affected the party and which was to be pushed through as a party measure needing all the votes that could be secured. There were a considerable number of absentees, several from New York City expressing a reluctance to return. The majority leader of the assembly kept the long-distance telephone busy telling them plainly that unless they returned at once and voted for the bill he would personally see that they never came back to the capitol in an official capacity. This threat brought the absentees to terms.

On bills of minor importance the floor leader sometimes takes part in the discussion and states that he is not expressing his views as a party leader, but as an individual, as he does not wish to make it a party question.

The majority and minority floor leaders are the party representatives on the field of debate. Each is sparring for advantage for his party, and although much that is said is on the discussion level solely, and, on most measures, has little reference to the votes, yet on some occasions they do marshall their party forces. They are not required to very often, as the party, through its committee system and the rules committee, sifts a large share of the bills before they get to the final stage.

THE RULES COMMITTEE

Another agency of party control is the rules committee. In the assembly it is composed of six members, four

being of the majority party. Two of these are elected by the party caucus, the speaker and the majority floor leader, and are thus direct representatives of the party. The other two are appointed by the speaker and are tried and loyal party servants.

In the last weeks of the session the rules committee has almost absolute control of all matters in the lower house. No bill can then be on the calendar except by a decision of this committee or by a two-thirds vote of the assembly discharging the committee. It is said that for years no vote to discharge has been taken. The rules committee can report any bill it chooses, no matter if it has been defeated in the regular committee. If it fails to put any bill on the calendar it is practically impossible to get a vote upon it. After it assumes control, the other committees are discharged. It holds no hearings. The control of the rules committee is ostensibly to facilitate legislation near the close of the session when the calendars become so congested. It acts as a sifter to choose what measures shall be allowed to pass. A large proportion of the bills passed the assembly after the rules committee took charge on April 29th, four weeks before the close of the session. Formerly it was not the custom for the rules committee to take charge so early, it having been limited to the period after both houses had agreed on a date for final adjournment, but in 1908 the rule was construed to mean the period after the assembly had adopted a resolution setting a time for final adjournment. Since 1908 the assembly rules committee takes charge after the adjournment resolution passes that house, whether adopted in the senate or not, and this gives a longer time in which it has control. The tendency is for the legislature to waste time in the early part of the session and then for

the rules committee to take charge in the last month and rush the measures through. This custom has been explained as being due partly to the fact that the leaders in the legislature are unable to make up their minds until late in the session as to just what big bills they will pass, but partly also because it is desired to put through without too much difficulty the program agreed upon. The rules committee can strangle what they do not want by failing to put it on the calendar, and they have also large powers to force the passage of what they do want.

One effective weapon is the special order bringing a measure before the house, limiting debate and sometimes forbidding amendments. When there is combined with the committee system the device of the special order of the rules committee, the house tends to become merely a ratifying agency and the action of the committee becomes the action of the house upon receiving a majority vote. In these cases the party has the triple bond of the speaker elected by the party, of the committee appointed with reference to party interests, and the action of the rules committee constituted as a party organ.

The ability of the rules committee to secure votes for certain measures they favor is enhanced by their control of the calendar and thus their control over other measures. If a member tends to become recalcitrant, he will find that the bills he is promoting will not appear on the calendar. Because of this, it holds a club not only over assemblymen but senators as well. The report of the Citizens' Union with reference to the direct primary bills said that they "were not permitted to come to a vote until after the committee on rules had assumed its function of controlling committee action upon all legislation in the assembly at the end of the session. It is well known to

persons who were able to observe at close hand the events of the regular session that the power of the rules committee was exerted in an improper manner to induce or compel opposition to direct primaries on the part of both senators and assemblymen interested in legislation which could not be passed without the aid of that committee. There is excellent reason to believe that but for such improper influence the Hinman-Greene bill would have passed the assembly. It was defeated by a vote of sixty-seven for and seventy-seven against."[2] If a senator interested in a bill which has passed his house, but is pending before the assembly rules committee refuses to vote for a bill which the rules committee is anxious should pass the senate, his bill can be held up. This power of the rules committee has been described by a former majority leader and a speaker of the assembly as a justification of the assembly rules committee, as it serves as a means for the assembly to protect itself against the senate. It is undoubtedly a means of unifying the two bodies and serves to enforce the views of the assembly rules committee upon the senate. It tends to subordinate the chamber which has less concentration of power, and is one factor in lessening the *differentia* which compose the supposedly desirable features of the bicameral system.

A number of the prominent bills defeated in 1910 were defeated in the assembly rules committee. On the other hand, at the close of the session the speaker claimed that of the fifteen important acts adopted by the legislature, twelve had been placed on the calendar by the committee on rules. He claimed the bills were saved from defeat by the abolition of legislative red tape. The rules committee does seem to facilitate business, but it greatly

[2] Report of the Committee on Legislation, 1910, p. 39.

concentrates power. This concentration is upheld on the ground that the committee is a party agency.

In the senate the method of doing business at the end of the session is somewhat different. The rules committee is composed of three members, the majority and minority leaders each elected by their party caucuses, and the chairman of the finance committee, who is, next to the president pro tem., the leading representative of the majority. "The standing committees continue their work until the end, but bills are reported from committee and received from the assembly in such numbers that only those advanced out of their order can be passed. This advancement may be secured by unanimous consent, but if one member objects the bill goes into general orders. Since general orders is not reached before adjournment, the bill is dead unless the rules committee takes action. It can at any time report a rule drafted in such a form as to take a bill out of its precarious position in general orders. Thus, indirectly in the senate, as directly in the assembly, the rules committee can decide the fate of bills in the last end of the session." [3]

The functions of the senate rules committee proper are not so important as those of the assembly committee, but, taken together, with the power of the majority leader in the appointment of committees, and upon the floor, and the power of the chairman of the finance committee in the matter of appropriations, the power of the committee is sufficient to maintain party control in the senate about as well as the assembly committee does in the lower house.

[3] Report of the Legislative Voters' Association, 1909, p. 5.

THE PARTY CAUCUS

Another agency of party control is the caucus. Mention has been made of the caucus of each party upon the organization of the legislature at which the candidates for the various legislative positions are chosen. There are few caucuses, and most of those which are called are upon matters which directly affect the party organization. They are not so much a means of determining party policy as they are a means of compelling party support to a definite line of action. Those who participate in a caucus are expected to abide by its decisions. In 1910, besides the caucuses at the beginning of the legislature, there was one by the Republican senators to fill the vacancy in the office of president pro tem. The choice for that office was elected by a majority of one in the caucus. His opponents asserted that he was elected on the orders of a combination of half a dozen local bosses who controlled the votes of the senators from their respective districts.

The Democrats held a caucus upon the matter of an inquiry into the legislative corruption which had existed in previous legislatures, and made the support of the Chanler resolution upon that subject a party measure. But the purpose of this was to gain party advantage by endeavoring to show up the corruption of the opposite party.

In some cases conferences are held, but they are more informal and do not have the binding force of a caucus. Sometimes a conference develops into a caucus. The Republican senators met in conference on the direct primary bills and agreed to hold a later caucus on the day when the bills were to be voted upon. They were quite evenly

divided on the subject and a part of them joined with the Democrats and forced a vote on the bills before a caucus could be held. The Democrats had held a caucus on those bills and decided to support the Meade bill. A small majority of the Republicans were opposed to that, and favored the Cobb bill, and if a caucus had been held would probably have bound the members of the majority party to support the latter. But the Meade bill passed. Later, after the governor had signified his intention to veto the Meade-Phillips bill, the Republicans held a caucus, and by a vote of twenty-two to ten decided to support the Cobb compromise bill—two senators having left the caucus before the final vote was taken. The following day after the governor had sent an emergency message urging its immediate passage, the senate passed it, all but one of the Republicans voting for it, and all but one of the Democrats present voting against it. It was defeated in the assembly by a vote of two to one.

The efficiency of the caucus as a party agency is evidenced by its ability to hold the party vote so completely on a subject on which there was such difference of opinion. Six senators who voted for it at this time voted against the same bill a few weeks later in the extra session, when they had not been bound by the party caucus. However, it might have been difficult in the regular session to have gotten a sufficiently full caucus to carry the measure through if the opponents of the bill had not been satisfied that it would be defeated in the assembly. It was within two days of adjournment, and the assembly rules committee was hostile. This was another illustration of the case of the second chamber serving to shift responsibility and causing an expression of the vote different from what it would have been if the vote taken was to have been the

final decision on the measure. In the extra session, twelve Republicans did refuse to go into the caucus, there being thus not a sufficient number left to pass the bill.

The caucuses mentioned were about the only ones held during the session, and it will be observed that they were on subjects closely connected with party interest. The corrupt-practices inquiry and direct primaries were matters vitally affecting the party organization, the former because of the effect of possible revelations on the party vote, and the latter because the passage of a direct primary law would mean a considerable change in the methods of conducting the party machinery.

These five agencies, the speaker, the committees, the floor leaders, the rules committee, and the caucus, are the means by which the party power in the legislature is concentrated and party control made effective. By means of these agencies, party discipline is enforced. If individual members persist in failing to co-operate with the organization, their bills may fail of advancement, their share of the patronage be withheld, and their local appropriations be defeated, and if they should be so fortunate as to be re-elected their future committee assignments are likely to be undesirable.

Under this system the individual legislator is subordinated to the party, and the responsibility becomes a party responsibility. The majority party has the responsibility for the legislation because it is practically an impossibility for a measure to be passed which fails to receive the support of the party agents which the organization has placed in power. Even the successful measures which are censoriously termed bipartisan are passed by the consent of the agents which the dominant party has placed in power.

EFFECT OF CONCENTRATION OF PARTY POWER

An effect of the concentration of party power in each house is to compel the co-operation of the other. This applies not only when both houses are dominated by the same party—party interest and party influences outside the legislature induce co-operation, then—but also when the two houses are of opposite parties. In 1912 the two chambers were controlled by opposite parties, the Democrats having a majority in the Senate, and the Republicans in the assembly. When local appropriation bills of the Republican senators came up on third reading in the senate, the Democratic floor leader had them laid aside until an arrangement could be made with the Republican organization in the assembly as to what bills should pass. The explanation given was that it was to protect the Democratic senators by holding the Republican bills in the senate until it was found out what the Republican assembly would do with the bills in which the Democratic senators were interested. If the Democratic leader had so desired he could have killed the bills of the Republicans, and on at least one occasion on the floor of the senate he informed, with considerable warmth, a Republican senator that if the latter insisted on taking a vote on his measure they would fight it out. The Republican senator, recognizing the outcome of such a conflict, meekly acquiesced in the plan of the Democratic leader to lay the bill aside until it would be seen what the Republican assembly would do with the Democratic senators' bills. By means of the strength of the party organization in one house a club was held over the bills which the opposite party organization in the other house was interested in. Of course, the opposite house might retaliate, but, in any

event, the strength of party tends to vitiate the bicameral theory.

Because there are few votes on which there is a division by party lines it must not be assumed that the party does not control. For several reasons, the lack of party division is not a criterion of the lack of party control. First, the party exercises control before the vote is taken. Second, few of the measures are of a character to require a party division. The parties are national parties and there are few State questions on which there is a distinct cleavage in the party as a whole. Most of the measures on which a party division is summoned are those which directly affect the organization or its sources of power, or are those on which a partisan advantage is sought. In the third place the responsibility of the majority is recognized and what it allows to pass is usually acquiesced in by the minority party. In the senate in 1910 even on such an important matter as the election of a president pro tem. the minority party did not cast its vote for a separate candidate. The reason given by the minority leader was that the senate was Republican, that the Republicans were responsible for the conduct of the senate, that their caucus had selected their candidate, and the Democrats would vote for the candidate selected by the Republican majority.

It is to be observed that the so-called bipartisan alliance, in which the party machines of both parties in both houses unite their closely organized forces against the opposition of temporarily insurgent elements, tends to unify the two houses and vitiate the bicameral theory. The situation is similar to that when the conflict is directly between the two parties. In either case, whether the vote is partisan or bipartisan, the concentration of party power tends to harmonize the two houses.

The lack of correspondence in the vote of the two houses when both are controlled by the same party can not be taken as an indication that the party does not control both, as most of the measures on which there was a lack of correspondence, failing in one house, were minor measures on which the party organization was neutral. In addition, sometimes it is a part of party tactics to encourage one element and yet avoid offending the opposite element by permitting a measure to pass one house but defeating it in the other, in this way aiming to retain the support of both sides. The handling of the Sunday baseball bill illustrates this.

These agencies discussed above are some of the means by which the party outside the legislature exercises its control within the legislature. The party elects the legislators. It is assumed to have a program to carry out. Whatever may be the extent of the program, it is essential to the party's interest to present such a record as will satisfy as many and alienate as few voters as possible. These party agencies are the means by which is exacted the team work which is necessary to facilitate business, do the work of legislating for the State, and make a record in harmony with party interests.

PRESSURE OF THE PARTY OUTSIDE

In addition to the methods of party discipline exercised within the legislature which have been mentioned, the party outside can apply most effective pressure. When the direct nominations bills were before the legislature, there were a number of local party leaders who journeyed to the capitol to bring pressure upon the legislators. If a legislator goes too far in his independence of the organization, he will likely not only fail to achieve his purposes in the legislature, but unless he comes from a district

where he has exceptional strength he will be in danger of being refused a renomination. Most of the Democrats who "insurged" in the session of 1911 failed to be renominated. In those districts where there were party bosses, all were defeated, substantiating the statement of Governor Hughes when, in discussing the bosses in a lecture at Yale, he said, "They control the nomination of the members of the legislature and dictate their votes upon legislative measures. If the latter disobey, they are left at home." [4]

The short terms of both assemblymen and senators make them in a sense always candidates. They have to keep an eye on their re-election, and they can not offend the power that can take their political life.

An illustration of the pressure which the party chiefs can bring was given in the election of the United States senator in 1911. The New York *Times* of January 18th said: "Every conceivable sort of pressure was brought to bear on the insurgents. Murphy sent messages to various localities calling on the bosses in these districts to put on the screws and bring their men back into the fold. As a result, some of the district leaders, with a retinue of heelers, came to the capitol to-day where, by threats or promises they sought to bring the recalcitrants back to regularity." One up-State assemblyman said, "Last night I received a telegram signed by about twenty men in my district urging me to bow down to the dictates of Mr. Murphy. It seems that Murphy sent for the leaders in my county, too, and when I took my seat in the assembly to-day I found waiting at my desk my county chairman and the representative of my district on the Democratic committee." It was also stated that word was sent out

[4] Conditions of Progress in Democratic Government, p. 103.

to members of the Democratic Editorial Association throughout the State that, in duty to the party, every Democratic newspaper should urge members in their districts editorially to abide by the action of the caucus or else denounce them as traitors. This request was regarded of great weight, for many of the smaller newspapers exist largely on the political printing they receive through the party in power.

The party operations within and those without the legislature concur and converge in maintaining party supremacy, and this applies in both houses. The party being supreme over both houses tends to make them work in harmony and to nullify the theoretical diversity implied in the bicameral system. It is interested for the sake of its program and its record to pass its measures through the two chambers. The same party ordinarily elects the members of both houses. It collects and distributes the campaign fund. It conducts the campaign, the individual candidate gaining the combined strength of the party group, and exercises discipline within and without the legislature.

Whether the party action is determined by a State boss, a group of bosses, or by party leaders, it has an identity of interest in both houses. It is true that sometimes, in the absence of a recognized authority, the party organizations of the two houses may be in opposition upon some measures, but in those cases it has been shown that the concentration of party organization in one house can force the other to yield. Ordinarily, however, party interest and the necessity of co-operation to achieve legislation bring the leaders of the two houses into agreement on important matters.

The association of both senators and assemblymen

in the same party organization and from the same general localities with the same general objects to promote is also a unifying factor. An illustration of assemblymen publicly working in the senate for the achievement of a certain object is given in connection with the Hinman-Greene bill, which was defeated by both houses. The clerk of the assembly, who, in a similar case in the lower house, had ordered several assemblymen to vote down an identical motion, was observed signaling violently to the majority leader of the senate what to do with a certain motion. The New York *Tribune,* in discussing the incident, said: "There was other assembly activity in the senate to-day. Speaker Wadsworth and Assemblyman Jesse Phillips (a member of the assembly rules committee) devoted some time and much energy to Senator W. and a couple of other senators, although there wasn't any likelihood that they would stray from the Wadsworth fold."

Illustration has been given of the senate minority leader helping decide the assembly minority appointments.

The party associations, the concentration of party power, the identity of party interest in the two chambers and the attainment of party ends, all tend to unify the two chambers and diminish their divergent character.

CHAPTER IX

CONCLUSIONS

Whatever utility the bicameral system may have in certain situations and under certain circumstances, most of the familiar arguments which have been advanced in its favor seem to have lost much of their potency and some even their pertinency when used in behalf of that system as it exists in an American commonwealth.

Reviewing the arguments summarized in Chapter I in inverse order:

(1). It is no longer the purpose of Constitution-makers to give a representation to special interests and classes in the State, particularly to the aristocratic portion of society, in order to counterbalance the undue preponderance of popular elements in one of the chambers. In the first State Constitution of New York, such was the avowed purpose and in the second Constitutional Convention in 1821 effort was openly made by some of the most learned men in the convention to provide for the continuance of the special representation of the landed class. While special interests may gain control of one house and thus effectively block legislation hostile to them, yet such a contingency is contrary to the general intention of the members of the constitutional conventions.

While one of the strong arguments for the establishment of the United States Senate was to give opportunity for the special representation of States, there is no parallel argument which applies in the State legislatures.

(2.) The argument that it restrains the propensity on the part of legislative bodies to accumulate power into

their own hands seems to have little application while we have the check of the executive and the courts. In any event, the restraining tendency of the second chamber is not evident. The unifying power of the party seems to have nullified the restraining tendency. The lack of self-restraint has been exhibited so much that the people have had to establish a restriction on the legislature by means of additional constitutional limitations.

(3.) The next claim for the bicameral system is that it destroys the evil effects of sudden and strong excitement and of precipitate measures springing from passion, caprice, personal influence and party intrigue. This argument is usually connected with the experience of revolutionary bodies or new bodies not yet fully accustomed to representative government, or without the checks which State legislatures are accustomed to. It is also put forward by those who have a fear of popular government and is an argument which was more frequently heard in an earlier and transitory period when such a fear was more prevalent. To be a check upon such excitements, passions, and intrigues, it is important that the second house be not subject to the same influences or that there be a delay until there can be a sober second thought. It has been shown that the two houses are subject to the same influences, and that delay is not always interposed. There are possibly occasions when the bicameral system in this respect would be advantageous, but such occasions are in the nature of crises which are not met with in the study of a normal legislative session. It is conceivable that the two-chambered system would be justifiable if once in a considerable period of time it should serve such a desirable purpose. But with the long habituation of the people to customary methods of legislation such crises are scarcely of sufficient frequency or importance to be

the determining factor in deciding legislative structure, especially if there are other forceful arguments contrariwise.

So far as the sudden excitement, passion, or caprice with regard to a certain measure in an ordinary session is concerned, there remains the check of the governor and also the opportunity for recall by the house itself on sober second thought. At present, after bills have passed both houses, they are frequently recalled, one hundred and thirty having been recalled in 1910. There were none of the bills which passed one house and were defeated in the second in 1910 whose passage through the one house could be attributed to sudden and strong excitement or passion, and it is doubtful if any could to mere caprice or prejudice.

(4.) The argument that it is more difficult to corrupt or wrongfully influence two bodies than one, and that the present system is a better defense against bad legislation because it requires the concurrence of two bodies instead of one in evil schemes seems apparently to have considerable validity. Yet the investigation has shown that, in the particular session studied, while a few questionable measures were checked by the second house, more of such measures, and those decidedly more questionable, passed both houses and required the check of the governor to stop them. It is not much more difficult to get such measures through two houses than it is to get them through one, provided the support of the party leaders is secured.

Toward measures which lack party support, the second house may become an obstruction whether they are good or bad, although, judging from the per cent. of measures passed, the second chamber can scarcely be renowned for its being a barrier to any class of measures.

Yet the obstruction to good measures tends to offset its obstruction to the bad ones. While a great deal of harm can come from bad legislation, the check of the governor, the courts, and the next election all tend to limit that class of legislation. On the other hand, failure to pass good legislation is not likely to meet with censure at the ballot box to the degree that positive action is.

There are many who claim that, as there are likely to be more bad bills than good, it should be the policy to kill as many as possible. But it must be remembered that sometimes failure to pass needed legislation means retrogression and has deleterious results because of the growth and development of interests and influences which make it more difficult to cope with the situation later. Bad bills have other checks than the second house. But if one house is corrupted, it serves as a formidable obstruction to good legislation for the duration of the term of that house, no matter how much the other house, the governor, and the people may desire it.

Owing to the possibility of preventing the passage of hostile bills, special interests have sought to control one house, their objects being made more easy of attainment because of the fact that the existence of two houses makes it more difficult to place responsibility than if there was a single chamber.

(5.) One of the fundamental assumptions of the bicameral theory is that there will be a jealous and critical revision by a rival body of men. Yet in actual operation the newspapers facetiously refer to a mock antagonism between the houses as a phenomenon which occurs but once a year. It would be difficult to produce evidence to show when they are either rival or jealous. Of the bills of 1910 which were defeated or amended by the second

house, it cannot be asserted that a single one was lost on account of jealousy or rivalry.

In the exceptional years when the two houses are controlled by opposite parties, the opposition is due to party spirit rather than to the rivalry between the houses. It has been shown that in a year when such a situation occurred a small amount of legislation was passed.

The argument in favor of an independent review of legislation by different minds acting under different and sometimes opposite opinions and feelings hardly applies because the two houses are constituted practically alike. The members are subject to like influences. As a rule they are members of the same party and dependent upon the same party organization. In general, they have the same class of constituents, and are subject to the same pressures. There may be a divergence in the sum of the personal equation of the two houses, but it has been shown that the individual is of little importance compared with the strength of party organization with its necessary assumption of responsibility for the legislative action taken.

Upon certain classes of questions, especially those of less importance and those on which the party organization is neutral, the review may be valuable and is not to be minimized. But upon the more important questions on which the party takes a position or those on which the responsibility is serious, the review of the second chamber is not sufficiently independent to accomplish the ends of those who seek such a reconsideration. But upon the minor measures the question remains whether it would be better for fuller consideration in one house or different consideration by two.

One circumstance to be taken into account in requiring a bill to pass through two chambers is that almost

always the final action is determined by the second house, which may or may not be the better decision. After the second house took action in only a very few cases was there any effort to make the action of the second house more closely correspond to that of the first. In practice the action of the second house is assumed to be the desirable decision. The first house, in order to get anything, accepts the amendments of the second. In some cases the action of the second house may be an improvement, but in other cases it may be the contrary. In actual practice the two houses seldom seek a middle ground, at least not by formal methods.

(6.) When considering the final argument for the bicameral principle, that it serves as a check on hasty, ill-considered, and careless legislation, there is danger of becoming confused by the great mass of measures with which a legislature has to deal. There are so many bills that careful and adequate consideration is exceedingly difficult in the short period of the session, and with the many demands upon the time of most legislators.

The bicameral system permits consideration by two different bodies. Two hasty considerations may not be as good as one thorough one, but they may be better than one hasty one. The effect of a second consideration is shown by the fact that nineteen per cent. of the bills passing one house were killed in the second, and fifteen per cent. of the bills passing both houses were amended in the second. However, it has been noted that most of the bills defeated were comparatively unimportant ones. The number would probably have been considerably less if the first house had accepted full responsibility.

Two considerations do not necessarily mean a double consideration. There is a tendency to assume that a subject has been considered in the other house when the con-

sideration has been very inadequate; or sometimes one house hastily passes a bill with the expectation that the other house will deal with it more carefully. There is frequently a shifting of responsibility to the other chamber. It is customary for amendments of the second house to be accepted without question. It is also customary to advance bills advocated by the party leaders. The important measures are determined upon by the party leaders and upon these the second chamber is of little additional usefulness in furnishing consideration. The present system tends to make the party boss or group of party leaders the determiners of what shall be passed, as it is the party's function to control both houses.

So far as real consideration is concerned, it was very inadequate in both houses. It would probably be better to have a thorough consideration in one chamber than a hasty, semi-irresponsible one in two. Whether the desired end could be practically achieved is a question whose answer cannot be determined by this investigation. With the opportunities for consideration which one house can afford in the various stages it seems that one chamber might be made sufficient. Whether one or two chambers, there should be provisions for a lessened number of bills, fuller knowledge, greater publicity, increased opportunities for persons outside to make their views known, and more direct responsibility. Mr. Amos's contention in favor of a thorough discussion by one body, instead of successive new discussions, seems to have weight. It has been observed that the most difficult problems before the session of 1910 had been investigated by joint committees.

With regard to the interposition of delay between the two chambers, it has been shown that this is not sufficiently guaranteed and the more dangerous bills are likely to be those rushed through both houses without much of an interval elapsing.

After reviewing the work of the legislature and considering the bills which the second chamber checked, it can scarcely be claimed that the second chamber is an effective check on hasty, ill-considered, and careless legislation. The bills defeated partake little more of this character than many of the bills passed. The quantity checked was not unimportant, but the quality of the selection did not show great discrimination. More undesirable bills passed than were killed, and the executive was impelled to kill more bills than both second houses combined.

The party has been described as the chief factor in harmonizing the two houses. It greatly lessens the value of the review by the second house. It makes it easier to pass undesirable legislation because it can force it through on the one hand and on the other the individual legislator can escape punishment at the next election by being submerged in the party ticket.

The party can make the consideration as careful and thorough or as hasty as it desires. It can interpose delay or rush the bill through. However, the party has its limitations. It cannot offend the public to the degree of causing a defection which will result in a loss of power. The organization is not always strong enough to rush measures through, and on the great mass of the less important measures it does not aim to dictate. In these cases, the second chamber acts as a check to a certain degree. It has been shown that most of the bills on which there was opposite action by the two houses were of small importance.

The study has of course been made under the situation where there is a two-party system. If the situation should arise when several parties should be represented in one house, none having a majority, there might occur

fortuitous or temporary coalitions which would make a second chamber more useful than at present.

It is thus seen that most of the arguments which have been made in behalf of the bicameral system fail of their cogency under the present practice, yet there are one or two which are worthy of consideration.

The bicameral system has the advantage of age and the habituation of the people to it, and the conclusions which can be reached after studying its operations in one State, chiefly confined to a single year, cannot be decisive enough or of sufficient weight to positively recommend a change in an age-old system, yet the suggestion of the possibility of a modification should not be as much out of place as some would have us believe. Reference has been made to the proposal for a single chamber in Ohio, Kansas, and Arizona, and to the fact that it is in successful operation in seven neighboring provinces of Canada, so it is not beyond the range of practical consideration. The single-chamber system would be in line with the movement for a more direct government as exhibited in the effort for the direct election of senators, direct primaries, commission government, and the initiative and referendum—the effort to make self-government, as President Wilson expressed it, a "straightforward thing of simple method, single, unstinted power, and clear responsibility."

If the legislature were reduced to a single chamber there would need to be several provisions in order that the strength of the present system might be conserved and the weaknesses eliminated. To this end the body should be comparatively small. Bluntchli pointed out that four eyes are better than two. But that does not prove that four hundred in a legislative body will perform their functions more efficiently than one hundred. It has been shown that, as an amending body, the smaller house is

very much superior. It is quite generally recognized that large legislative bodies defeat their own ends and the real legislative power becomes centralized in a small, forceful group which is adapted for decisive action rather than for deliberation or consideration. So it would be better to have the legislative body approximately the size of the present senate, about fifty members.

As the problems with which legislation must deal become continuously more complex and as the State activities become more extended, the need for capable legislators familiar with all phases of State government becomes more imperative, and the aim should be to have men who shall give their entire time to their legislative work. The legislature should be composed of men more expert. Sufficient salary should be given that competent men would be justified in giving the business of legislation their undivided attention.

Reference has already been made to the need of those provisions which would lessen the number of minor local or special bills, safeguard the stages for consideration, provide for the assembling of information, for publicity, for the intervention of time, and for opportunities for the wishes of the people to be expressed.

These provisions are needed, whether the legislature shall be bicameral or unicameral. If they are adopted in combination with the unicameral system there would be lacking practically none of the advantages of the bicameral system. If they are adopted in combination with the bicameral system the legislative situation would be improved, but there would remain some of the disadvantages of the two-chambered system.

In any event, the trial of a safeguarded unicameral system would not be a very dangerous experiment.

VITA

David Leigh Colvin was born at South Charleston, Ohio, January twenty-eighth, 1880. After attending the public schools at that place, he completed his preparatory work at the American Temperance University, Harriman, Tennessee. Entering Ohio Wesleyan University, he was graduated in 1900 from that institution with the degree of A. B.

He has spent five years in post-graduate study in the fields of Constitutional Law and Politics, Economics, Political Philosophy, International Law, Administrative Law, Sociology, Statistics, and related subjects. He spent one half year at the University of California taking courses under Professors Plehn and Page; three quarters at the University of Chicago under Professors Small, Henderson, Merriam, Laughlin, and Hall; and three and one-half years at Columbia University under Professors Goodnow, Beard, John Bassett Moore, Dunning, Clark, Seligman, Seager, Giddings, H. L. Moore, Munroe Smith, and Lindsay.